

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,

-vs-

ERIC K. DILLARD,  
Defendant.

Case No. 13 CR 442

Chicago, Illinois  
September 4, 2014  
2:30 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS - VOLUME 1  
BEFORE THE HONORABLE JOHN W. DARRAH

APPEARANCES:

For the Plaintiff:

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For the Defendant:

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1 (Proceedings had in open court:)

2 THE CLERK: 13 CR 442, United States versus Eric  
3 Dillard.

4 THE COURT: The file is still in my office but I  
5 note -- do you want to identify yourselves for the record?

6 MR. FAYHEE: Certainly, your Honor.

7 Lindsay Jenkins and Ryan Fayhee for the United  
8 States.

9 MR. CROWE: Ryan Crowe for Eric Dillard, the  
10 defendant, who is present before the Court. Good afternoon,  
11 your Honor.

12 THE COURT: I just saw and read for the first time  
13 a motion by you, Mr. Crowe, to suppress certain testimony by  
14 the agents on the grounds that certain reports were not  
15 presented to you pursuant to Rule 16 disclosure, originally  
16 back in -- a year ago, and then when you renewed, made a  
17 specific request in April, that they again weren't disclosed  
18 until very late.

19 Do you want to file a response to that, Ms.  
20 Jenkins, Mr. Fayhee?

21 MS. JENKINS: Actually, your Honor, I think we're  
22 going to be in a position to significantly narrow the issues  
23 that will be before you today. I've discussed with Mr. Crowe  
24 some of the information related to it.

25 The shortest version is, I turned those materials

1 over to Mr. Crowe as soon as I received them in preparation  
2 for the suppression hearing two weeks ago, when we originally  
3 -- when we were originally set to go. I asked the agent to  
4 help me identify the ways in which he was able to identify  
5 the defendant, and I turned those reports over at that time.

6 THE COURT: When did you first see them, Ms.  
7 Jenkins?

8 MS. JENKINS: The day I turned them over to  
9 Mr. Crowe.

10 THE COURT: Did you discuss with the agent why you  
11 hadn't seen them earlier?

12 MS. JENKINS: I did. And I can explain a little  
13 more in detail.

14 In connection with the hearing, I will say this:  
15 The case agent whom I had been working with and who assisted  
16 the U.S. Attorney's Office in charging this case, is not the  
17 same agent who will be testifying here today. That agent is  
18 no longer based in Chicago. And it was only based upon his  
19 need to review his own database and records and reports to  
20 determine whether or not there was any additional information  
21 that could help him testify as to how he was able to identify  
22 the defendant.

23 I would like to just say for the record that the  
24 amount of material produced was a total of about 12 pages.  
25 Only two pages -- excuse me. Only two reports relate to the

1 identification of the defendant. The rest of the material,  
2 quite frankly, your Honor, is 3500 material that's being --  
3 that was produced seven-and-a-half weeks before trial in this  
4 case. It has no bearing on the ability of the government to  
5 identify -- to establish probable cause for purposes of  
6 today's hearing. In fact, it was just an early disclosure of  
7 3500 materials related to the cooperating source and was  
8 produced, frankly, out of an abundance of caution.

9 It certainly was not a malicious effort by the  
10 government to do that. We just found an additional report  
11 that helped to identify both the Mountaineer and the  
12 defendant. The remaining material is 3500 material and  
13 really has no specific bearing on the transaction at issue.

14 THE COURT: Well, in your papers, Mr. Crowe, you  
15 point out there's been three approaches typically taken by  
16 the courts when an issue of this matter is raised. I think  
17 it's clear, though, the Seventh Circuit requires a showing of  
18 bad faith, does it not?

19 MR. CROWE: Yeah, I believe it does, your Honor.

20 THE COURT: All right.

21 I'm not in a position to rule if you're really at  
22 issue on this matter right now. I just read it for the first  
23 time prior to preparing for this hearing -- as I was  
24 preparing for this hearing.

25 Do you think -- do you have -- you indicated that

1 you might have an agreement that might obviate the need to  
2 address that or --

3 MS. JENKINS: Well, I think many of the issues  
4 raised by the suppression hearing -- by the suppression  
5 motion, excuse me, have been narrowed substantially. I think  
6 that we can discuss that with your Honor prior to calling our  
7 first witness. But I think the only issue here is probable  
8 cause, whether or not there was probable cause to believe  
9 that it was the defendant who participated in a series of  
10 activities on a particular day.

11 I'm happy to ask the witness, Special Agent  
12 Durante, the questions necessary in order to establish  
13 probable cause, but, of course, the challenge that the  
14 defendant himself raises is identity. And, of course, you  
15 know, I -- I think that there is absolutely no good faith  
16 basis to -- let me put it another way: If the defendant is  
17 arguing that it wasn't him, then the government certainly can  
18 offer all the ways in which the agents and certainly the  
19 under -- the cooperating source were able to identify him.

20 I really don't -- there was certainly no bad faith,  
21 but I don't think you can raise identity as an issue and  
22 then, in the context of a suppression hearing, suppress the  
23 ways in which the agent would testify he was able to know  
24 that the Eric being referred to was the defendant, Eric  
25 Dillard.

1 THE COURT: Well, Mr. Crowe in his papers says that  
2 he had prepared a line of -- prepared a theory of his --  
3 regarding his motion to suppress, including cross-examination  
4 of the witnesses, and that when he saw this new information  
5 it disturbed or somehow interrupted your theory and caused it  
6 to change.

7 The case law -- and I haven't had a chance -- I'm  
8 relatively familiar with this issue from my own past  
9 experience, but the case law seems to say that absent a  
10 showing of bad faith, that the obvious solution is to just  
11 grant a continuance so the defense lawyer claiming surprise  
12 has a chance to prepare.

13 Are you persisting in that theory, Mr. Crowe?

14 MR. CROWE: I say this with much regret as a former  
15 Assistant U.S. Attorney but, yes, I am.

16 And I think, as I set forth in my motion, there's  
17 fairly strong facts in support of it insofar as the agent,  
18 Special Agent Eric Durante, who was the lead agent in Mr.  
19 Dillard's investigation. And he's the one who signs off on  
20 all the reports.

21 I'm going to elicit testimony. There's -- in all  
22 the DEA reports there's a Box 5 and it says "by colon." In  
23 every single one of those the "by" is SA Eric Durante.

24 And the same is true in the King case. He was the  
25 author in box 5, where it says "by", of every single report

1 in the King case.

2 Ms. Jenkins, who is the prosecutor obviously in  
3 this case, was also the lead prosecutor -- one of two  
4 prosecutors in the King case.

5 So as I set forth in my motion, she -- King was a  
6 major trafficker. I don't think there's any dispute about  
7 that. And she would have known what the evidence was against  
8 him --

9 THE COURT: We've got a really busy afternoon here.

10 MR. CROWE: Okay.

11 THE COURT: We've got a jury that has to be  
12 instructed further.

13 What I'm driving at is this: I don't at this point  
14 have the wherewithal to rule as to whether or not your motion  
15 should be granted.

16 And then secondly, if it is to be granted, then --  
17 if it's to be denied, then the next consideration is, would  
18 you need additional time to prepare. And I take it your  
19 answer to that would be yes?

20 MR. CROWE: Well, your Honor, I -- I have prepared  
21 both ways.

22 THE COURT: I see. Okay.

23 MR. CROWE: I prepared -- if the Court were to rule  
24 and grant my motion, I'm prepared to go forward with my  
25 original line of examination. I'm also prepared -- I did my

1 best to make adjustments, so I am prepared to go today.

2 THE COURT: All right. So you are prepared.

3 What about doing this: What about conducting a  
4 hearing, and I will then take under advisement not only the  
5 merits of your motion but the merits of your motion to  
6 disregard, or keep out, certain pieces of information that's  
7 produced based --

8 MR. CROWE: That seems like a Solomonic resolution  
9 to me, your Honor.

10 THE COURT: Does that mean it's good or bad?

11 MR. CROWE: That's good.

12 THE COURT: Ms. Jenkins, is that okay with you?

13 MS. JENKINS: That's fine with me.

14 As I have expressed to Mr. Crowe, this is the  
15 second time the government has made arrangements for Mr.  
16 Durante to travel back to Chicago. So our preference  
17 obviously would be to proceed with his testimony so we do not  
18 have to do that again.

19 THE COURT: Why don't we do this then: Why don't  
20 you put on your hearing and introduce everything you were  
21 going to introduce. You can, at the appropriate time, object  
22 and we'll consider it either substantive evidence or an offer  
23 of proof.

24 After the hearing you can submit written authority  
25 for the proposition that the motion to suppress should be



1 granted as well as what I should disregard because you think  
2 it's a violation of Brady, as near as I can tell, or Giglio.

3 MS. JENKINS: And, your Honor, that's actually the  
4 point I would like to make. It's not Brady because it's not  
5 exculpatory in any way. In fact, all the information is  
6 incriminating.

7 THE COURT: I can't know that yet. I mean, you all  
8 -- Mr. Crowe has a different idea of it.

9 MR. CROWE: My theory is it's a violation of Rule  
10 16.

11 THE COURT: I found out that if I were clairvoyant  
12 I could do this job a lot better.

13 So we're going to take this jury instruction and  
14 then we'll begin the hearing. Fair enough?

15 MR. CROWE: Thank you, your Honor.

16 MS. JENKINS: Thank you, your Honor.

17 (Brief recess was taken.)

18 THE CLERK: 13 CR 442, United States versus Eric  
19 Dillard.

20 THE COURT: There's the additional issue regarding  
21 impeachment by the material that was developed in a  
22 proceeding before Judge Kennelly. And, Mr. Crowe, you  
23 responded you had no intention to go into that if certain  
24 conditions were met.

25 MR. CROWE: Yes, your Honor.

1 THE COURT: Have you discussed that further?

2 MS. JENKINS: We have, your Honor.

3 We're in agreement -- as a preliminary matter --  
4 and I would like to just put a few things on the record about  
5 what the parties are in agreement on.

6 But we will not be calling Special Agent Warren in  
7 light of the narrowing of certain issues. So I think the  
8 issue is moot as to whether or not impeachment can be  
9 addressed at this hearing.

10 But, in any event, the parties did agree that the  
11 government wouldn't elicit testimony from Special Agent  
12 Warren concerning accolades. And, conversely, Mr. Crowe  
13 would not elicit certain testimony concerning the prior  
14 ruling by Judge Kennelly. So I think that issue is moot.

15 THE COURT: Do you agree, Mr. Crowe?

16 MR. CROWE: Yes, I do, your Honor. Provided he's  
17 not testifying, there's no need for a ruling or further  
18 attention to it.

19 THE COURT: That's an interesting issue.

20 Okay. Are you ready to proceed?

21 MR. CROWE: Yes, your Honor.

22 MS. JENKINS: We are.

23 Before we call our first witness, I think -- and  
24 the government, I believe, will have only one witness. I  
25 think the parties can agree to certain facts which will

1 narrow the scope of the hearing today, some of which is  
2 addressed in the briefing but some of which has been further  
3 clarified in light of conversation with counsel.

4 I believe the parties are in agreement about the  
5 following things, and I'll ask Mr. Crowe to confirm.

6 The parties are in agreement that the defendant was  
7 advised of his Miranda rights following his detention, and  
8 that he voluntarily agreed to speak with agents but refused  
9 to sign a written Miranda waiver form.

10 I do not believe that Mr. Crowe is contending that  
11 Mr. Dillard refused to speak with agents, only that he  
12 refused to sign the written Miranda waiver form that was  
13 presented to him in connection with his detention.

14 THE COURT: So agreed, Mr. Crowe?

15 MR. CROWE: Yes, your Honor.

16 THE COURT: Okay.

17 Ms. Jenkins?

18 MS. JENKINS: The parties also agree that the  
19 defendant voluntarily signed a written consent to search  
20 form -- his signature appears on that form -- following his  
21 detention on the evening of May 26th or early in the morning  
22 of May 26th, 2008, and obviously certain materials were  
23 recovered from his business. But I do not believe that there  
24 is any contention that the defendant did not voluntarily sign  
25 the written consent to search form that was placed before

1 him.

2 MR. CROWE: That is also correct, your Honor.

3 THE COURT: Very well.

4 MS. JENKINS: The parties are also in agreement  
5 that on the evening of May 26th, 2008, that DEA arranged for  
6 a canine or drug detection dog to conduct a perimeter search  
7 around the outside of the Mercury Mountaineer that's at issue  
8 in this case and that the dog alerted to the presence of  
9 narcotics within that vehicle.

10 There are remaining issues that I think Mr. Crowe  
11 would like to address with regard to the subsequent search,  
12 but I don't think he's disputing that the agents did, through  
13 the canine alert -- that the canine did alert to the presence  
14 of narcotics within that vehicle.

15 THE COURT: And what was that date again?

16 MS. JENKINS: May 26th, 2008.

17 THE COURT: Do you agree, Mr. Crowe?

18 MR. CROWE: Yes, your Honor. I do not dispute that  
19 the canine did alert when sniffing around the exterior of the  
20 blue Mercury Mountaineer. I believe that we disagree to  
21 whether or not that alert by itself constitutes probable  
22 cause to search the vehicle.

23 THE COURT: All right.

24 Anything further, Ms. Jenkins?

25 MS. JENKINS: I think the only other issue -- and I

1 don't believe that there's any dispute that the Mercury  
2 Mountaineer was not registered to the defendant. I don't  
3 remember if we specifically discussed this yesterday or on  
4 other occasions, but I don't think that there's any dispute  
5 that the Mercury Mountaineer was not registered to the  
6 defendant.

7 MR. CROWE: We had not discussed it, but it is my  
8 understanding as well, so I do so stipulate.

9 MS. JENKINS: So I think from the government's  
10 perspective, what that leaves then is whether or not the  
11 government can establish probable cause in the events during  
12 the evening of May 26th, 2008. And I think those -- that  
13 relates specifically to the identity issue, the identity of  
14 the defendant.

15 The government is prepared to call Special Agent  
16 Eric Durante to testify to information he learned that  
17 evening and throughout the course of the night in order to  
18 establish probable cause. We were not going to elicit  
19 testimony from him that gets to the stipulated issues because  
20 it seems that those things can be resolved on the briefs.

21 I will note, as I've discussed with counsel, there  
22 is a portion of the audio recording made by the cooperating  
23 source, Vincent Howard, which from a suppression hearing  
24 standpoint the government believes would certainly buttress  
25 Special Agent Eric Durante's testimony about the identity of

1 the defendant.

2 I have provided that material to Mr. Crowe.  
3 Portions of that recording could be played, depending on  
4 where your Honor comes out on the probable cause issue.

5 I can certainly play it in connection with Mr.  
6 Durante's testimony or I can wait until other witnesses are  
7 called. And if your Honor believes that you would like to  
8 hear portions of the recording, we can do that.

9 THE COURT: Why don't you assume that I will not  
10 make a ruling today and put everything in that has to be put  
11 in?

12 MS. JENKINS: Okay. If that is the case, then the  
13 government would -- and I raise this because Mr. Crowe had  
14 previously made a reference at the last status hearing that  
15 he would move to suppress certain portions of the recording.

16 But in light of the fact that your Honor would take  
17 briefing on the issue, or at least not rule today, then at  
18 the appropriate time during Mr. Durante's testimony the  
19 government would offer a short clip, not the entirety of the  
20 recording but a portion of the recording that was made by  
21 Vincent Howard, who is the cooperating source in this case,  
22 in which he placed a call to Special Agent Durante and  
23 relayed information about the defendant, what the defendant  
24 was doing, the vehicle that the defendant was driving and the  
25 movements that were being made from one location to another.

1           And I put that on the record because I know that  
2       Mr. Crowe had previously indicated that he had some objection  
3       to the use of that recording.

4           THE COURT: You're all way ahead of me here now  
5       regarding these facts.

6           Let me ask you to do this: Put in anything you  
7       think might support the government's position that the motion  
8       to suppress would be denied, even if there's some sequential  
9       evidence that would only be operative if I didn't make a  
10      decision as to something. Put all of that in.

11          And, Mr. Crowe, I'll ask you to object and state  
12      the grounds for your objection to any information that's  
13      being offered, whether it's your -- the grounds are in that  
14      memo, that you think this material wasn't timely produced to  
15      you, or other grounds. And then we'll take your objection  
16      under advisement.

17          If your objections are overruled, it will be  
18      considered substantive evidence regarding the motion to  
19      suppress. If your objections are sustained, that information  
20      will stand in the record as an offer of proof.

21          MR. CROWE: That's fine, your Honor, just --  
22      provided that I am clear, that the Court understands, that I  
23      can state the objections I have to the CD-ROM of the  
24      communications between Howard -- Howard --

25          THE COURT: Why don't I ask you to do it at the

1 time --

2 MR. CROWE: All right. I'll make a speaking  
3 objection, if that's agreeable.

4 THE COURT: Yes, you can do it at the time. And  
5 then I will ask you to address that in your papers after all  
6 the proofs are in.

7 MR. CROWE: That's fine, your Honor. Thank you.

8 THE COURT: Okay.

9 Mr. Fayhee, are you agreeing with all this?

10 MR. FAYHEE: Pardon me?

11 THE COURT: Do you agree with all this?

12 MR. FAYHEE: I'm in absolute agreement.

13 MR. CROWE: And one additional matter. Ms. Jenkins  
14 initially told me that she was also -- she's going to call --  
15 it started out with three witnesses, then it went down to  
16 two, with the second one being a Chicago Police Department  
17 sergeant by the name of Dwayne Johnson, who is part of the  
18 surveillance team. So I prepared a cross-examination for  
19 him.

20 And then today Ms. Jenkins advised me that she does  
21 not intend to call him. I initially said that's fine, and  
22 then I thought about it for five minutes. Then I called Ms.  
23 Jenkins right back and said, no, I do want him to be here,  
24 and if you're not going to call him, I want to call him. So  
25 I think Ms. Jenkins is not going to call Sergeant Dwayne



1 Johnson, but I will.

2 THE COURT: Is he available, Ms. Jenkins?

3 MS. JENKINS: We have continued to make him  
4 available. He's here and sitting outside the courtroom.

5 THE COURT: All right.

6 Is there a motion to exclude witnesses?

7 MS. JENKINS: We've asked Sergeant Johnson to sit  
8 outside, so we'll just do that. That's fine.

9 THE COURT: Okay. So you anticipate offering two  
10 witnesses?

11 MS. JENKINS: I think between the two parties --

12 THE COURT: You're going to offer a witness, you'll  
13 cross-examine, and then you're going to offer Sergeant  
14 Johnson?

15 MR. CROWE: Yes, your Honor.

16 I also will ask permission now to treat him as a  
17 hostile witness and be able to cross -- ask him  
18 cross-examination based questions.

19 THE COURT: Any objection to that, Ms. Jenkins?

20 MS. JENKINS: No.

21 THE COURT: Very well.

22 MR. CROWE: Thank you, your Honor.

23 THE COURT: Okay.

24 Call your first witness, please.

25 MS. JENKINS: The government will call Special

Durante - direct

1 Agent Eric Durante.

2 THE COURT: Agent, would you step up here, please.

3 ERIC DURANTE, GOVERNMENT'S WITNESS, DULY SWORN

4 MS. JENKINS: I'm actually hoping to get a little  
5 bit of help with the ELMO so that the --

6 THE COURT: You need the -- okay.

7 MS. JENKINS: -- agent will eventually be able to  
8 see --

9 THE COURT: I can tell you right now the lens is  
10 pointed improperly on the ELMO, Ms. Jenkins.

11 MS. JENKINS: And if you could just bear with me  
12 one moment, your Honor.

13 THE COURT: Take your time.

14 (Brief pause.)

15 THE COURT: Do you want to state your name and  
16 spell your last name for the record?

17 THE WITNESS: Yes, sir.

18 Eric Durante, D-U-R-A-N-T-E.

19 THE COURT: Thank you.

20 THE WITNESS: You're welcome.

21 DIRECT EXAMINATION

22 BY MS. JENKINS:

23 Q. Good afternoon, Special Agent Durante.

24 Where are you currently employed?

25 A. With DEA in Nassau, the Bahamas.

Durante - direct

1 Q. What is your title, sir?

2 A. Special Agent.

3 Q. How long have you been a Special Agent with DEA?

4 A. Approximately ten-and-a-half years.

5 Q. And you indicated that you're currently assigned to the  
6 Nassau office?

7 A. Yes, I am.

8 Q. How long have you been assigned to the Nassau office?

9 A. Approximately four years.

10 Q. Prior to the Nassau office where was your assignment?

11 A. Chicago Field Division.

12 Q. And during what years did you work as a Special Agent in  
13 Chicago?

14 A. From 2004 to 2010.

15 Q. Prior to becoming a Special Agent did you work in law  
16 enforcement?

17 A. Yes, I did.

18 Q. What did you do?

19 A. I was a police officer in the State of Arizona for  
20 approximately six years.

21 Q. Prior to becoming a Special Agent, did you receive any  
22 training in order to receive that title?

23 A. Yes, I did.

24 Q. And can you just generally describe the training you  
25 would have received?

1 A. Approximately four months in Quantico, training on  
2 long-term investigations, making arrests, dealing with  
3 confidential sources, tactical training, firearms --

4 Q. During your time --

5 A. -- handling of evidence.

6 Q. I apologize.

7 A. -- handling of evidence, so forth.

8 Q. Thank you.

9 During your time with the Chicago Field Division of  
10 DEA, what were your general responsibilities and duties?

11 A. Long-term investigation, enforcing criminal code,  
12 federal code, drug codes, dealing with confidential sources,  
13 dealing with confidential -- or cooperating defendants,  
14 handling evidence, making cases, running wire investigations,  
15 a number of other things as well.

16 Q. Sir, I would like to turn your attention to 2008. Were  
17 you working as a Special Agent in Chicago in that year?

18 A. Yes, I was.

19 Q. During that period were you involved in Chicago's --  
20 were you involved in DEA's investigation into an individual  
21 named Michael King?

22 A. Yes, I was.

23 Q. What kind of investigation were you conducting into  
24 Mr. King?

25 A. I was the case agent on that investigation. It was a

Durante - direct

1 large scale cocaine narcotics investigation on Mr. King and  
2 his drug trafficking organization.

3 Q. Over the course of the drug investigation into Mr. King  
4 did you have occasion to work with any cooperating  
5 individuals?

6 A. Yes, I did, numerous ones.

7 Q. Did you have an occasion to work with an individual  
8 named Vincent Howard?

9 A. Yes, I did.

10 Q. Approximately when did Mr. Howard begin cooperating with  
11 DEA?

12 A. Early 2008.

13 Q. As a part of Mr. Howard's cooperation did you meet with  
14 him in person?

15 A. Yes, I did, on numerous occasions.

16 Q. Did you debrief Mr. Howard generally about his  
17 relationship with Mr. King?

18 A. Yes, I did.

19 Q. And did you debrief Mr. Howard about other people who  
20 worked in Mr. King's drug operation?

21 A. Yes, I did.

22 Q. Based on your debriefs of Mr. Howard, what was your  
23 understanding of Howard's role in King's drug organization?

24 A. Howard was a transporter and a wholesale supplier of a  
25 kilogram of cocaine that he received from Mr. King. And then

1 he would -- he traveled down -- he traveled down to Kentucky  
2 to sell cocaine that he had received from Mr. King and then  
3 he would travel back to Chicago to bring the proceeds of the  
4 sales to him.

5 Q. Why was Mr. Howard cooperating with law enforcement in  
6 2008?

7 A. For his benefit, to hope -- in hopes that he receive a  
8 lighter sentence from the U.S. Government.

9 Q. At the time you began working with Mr. Howard as a  
10 cooperator, were any promises made to him at that time about  
11 any consideration that he might receive?

12 A. No, there were not.

13 Q. As a part of Mr. Howard's cooperation, what did he agree  
14 to do?

15 A. He agreed to gather evidence against Mr. King and other  
16 co-conspirators of Mr. King concerning the drug trafficking  
17 organization that Mr. King was running, to include recorded  
18 phone calls and participating in cocaine transactions.

19 Q. You mentioned that Mr. Howard agreed to make recordings  
20 as a part of his cooperation, is that correct?

21 A. Yes, he did.

22 Q. What, if anything, did you provide with Mr. Howard --  
23 provide Mr. Howard in order to assist him with making those  
24 recordings?

25 A. I gave him a digital recorder, as I do with most of my

1 cooperators, to record phone calls that come in or that he  
2 places when I'm not available or around.

3 Q. So is it fair to say that Mr. Howard made recordings  
4 when you were not present?

5 A. Yes, he did.

6 Q. What did Mr. Howard do with those recordings after he  
7 made them?

8 A. After he made them he would collect them altogether,  
9 keep them on the digital recorder, and then when I would see  
10 him and debrief him, he would turn them over to me, at which  
11 time I would collect them and place them into evidence.

12 Q. Is it fair to say that Mr. Howard made a series of  
13 recordings over several months? Is that fair to say?

14 A. Yes, it is.

15 Q. I would like to direct your attention to May 2008. Were  
16 you working with Mr. Howard at that time?

17 A. I'm sorry, what date?

18 Q. In May of 2008 --

19 A. Yes, I was.

20 Q. -- were you working with Mr. Howard at that time?

21 A. Yes, I was.

22 Q. Had he been providing you information about King's drug  
23 trafficking activities as of May 2008?

24 A. Yes, he had been.

25 Q. Had you been able to corroborate some of the information

1 that Mr. Howard had been providing you over the course of his  
2 cooperation?

3 A. Yes. I was able to corroborate a number of people that  
4 he said were involved with the organization, a number of  
5 vehicles that he said was involved in the organization. And  
6 then I was able to listen to some of the phone calls he  
7 provided that indicated that Michael King was running a large  
8 scale drug trafficking organization.

9 Q. Sir, I would like to direct your attention specifically  
10 to May 26th, 2008. Were you working on that day?

11 A. Yes, I was.

12 Q. Was May 26th, 2008, the Memorial Day holiday?

13 A. Yes, it was.

14 Q. Did you develop an investigative plan for that  
15 particular day using information obtained from Mr. Howard?

16 A. Yes, I did.

17 Q. And in general terms, what was the plan?

18 A. Mr. Howard was supposed to go to Mr. King that day and  
19 receive five kilograms of cocaine from him.

20 Q. In advance of this operation did you and other members  
21 of DEA meet with Mr. Howard?

22 A. Yes, we did.

23 Q. And did Howard place or receive any phone calls in  
24 connection with this transaction?

25 A. Yeah. Earlier in the day he had talked to Mr. King and



1 I think Mr. Claude McKay about the transaction.

2 Q. Were you present when those phone calls were made or  
3 received?

4 A. No, I wasn't.

5 Q. Were any of those phone calls recorded?

6 A. Yes, some of them were.

7 Q. As a result of the telephone calls what did Mr. Howard  
8 agree to do?

9 A. Mr. Howard agreed to meet with DEA agents and to  
10 participate in the transaction with DEA to pick up the five  
11 kilograms of cocaine from Mr. King.

12 Q. Where was Mr. Howard going to go in order to begin this  
13 particular transaction?

14 A. He had told me he -- Mr. King advised him to meet him at  
15 Claude McKay's residence in Hyde Park.

16 Q. And just to be clear, what kind of drug did Howard relay  
17 that he was expecting to receive?

18 A. Five kilograms of cocaine.

19 Q. And what -- you said five kilograms of cocaine?

20 A. Yes, ma'am.

21 Q. Thank you.

22 THE COURT: What was that? You referred to  
23 something specific in Hyde Park. Was that a location or  
24 something?

25 THE WITNESS: Yes, sir. Mr. Claude McKay's

1 residence in Hyde Park.

2 THE COURT: Okay.

3 BY MS. JENKINS:

4 Q. I would like to direct your attention to the address 924  
5 East Hyde Park Boulevard in Chicago. Are you familiar with  
6 that location?

7 A. Yes, I am.

8 Q. And over the course of your investigation did you have  
9 occasion to participate in surveillance outside of that  
10 location?

11 A. Yes, I did.

12 Q. I would like to show you what's in front of you, I  
13 believe, which is marked as Government Exhibit Map 1. Do you  
14 recognize that?

15 A. Yes, I do.

16 Q. What is that?

17 A. That's a picture of the front of the residence of 924  
18 and 926 in Hyde Park.

19 Q. Does it fairly and accurately depict the residence  
20 outside of 924 East Hyde Park in Chicago?

21 A. Yes, it does.

22 MS. JENKINS: And at this time, your Honor, the  
23 government would move to admit -- and it's already  
24 published -- but move to admit Government Exhibit Map 1.

25 THE COURT: Mr. Crowe, any objection?

Durante - direct

1 MR. CROWE: No, your Honor.

2 THE COURT: That's admitted.

3 (Said exhibit was received into evidence.)

4 BY MS. JENKINS:

5 Q. And, Special Agent Durante, is it fair to say that this  
6 is a multi-unit building?

7 A. Yes, it is.

8 Q. And aside from 924 East Hyde Park, does this structure  
9 also contain any other residential street address?

10 A. 926, and I think there might be another one but -- 924,  
11 926 that picture shows.

12 Q. And does there also appear to be a shared gate for this  
13 residence?

14 A. Yes, it does.

15 Q. Was this the first meeting location for the evening on  
16 May 26th of 2008 for the transaction?

17 A. Yes, it was.

18 Q. What was your understanding as the purpose -- was the  
19 purpose for Mr. Howard to go to this particular address?

20 A. To meet with Michael King and Claude McKay to take part  
21 in a transaction to pick up five kilograms of cocaine.

22 Q. How did Mr. Howard relocate to this residence?

23 A. By an undercover vehicle that we had previously provided  
24 him.

25 Q. When you say undercover vehicle, can you just explain

1 what that means in this context?

2 A. Yes. We had previously -- before we went to this  
3 address we met in a predetermined location, which we -- at  
4 that time we provided him with an undercover vehicle; it has  
5 a trap in it. It's a UC vehicle, one of our vehicles that we  
6 use to --

7 Q. And when you say a trap, do you mean a hidden  
8 compartment?

9 A. Yes, a hidden compartment.

10 Q. Okay.

11 Was Mr. Howard searched before he was relocated --  
12 before he relocated to this address?

13 A. Yes. At the predetermined location we searched him, we  
14 searched the vehicle for contraband and negative results. We  
15 also provided him with a recording device -- transmitter and  
16 a recording device.

17 Q. So was -- let's take those one by one.

18 First, you said he was provided with a recording  
19 device, is that correct?

20 A. Yes.

21 Q. Was that device concealed on him in any way?

22 A. Yes, it was.

23 Q. Was that device an audio only recording or was there  
24 also a video capability on that recording?

25 A. Only audio.

Durante - direct

1 Q. Was he also provided with a transmitter?

2 A. The same device.

3 Q. And what does a transmitter allow you to do?

4 A. To hear conversations that he's having with targets of  
5 interest.

6 Q. Were you able to communicate with Howard in any other  
7 way aside from the transmitter that you just mentioned?

8 A. Yes, by cell phone.

9 Q. And who activated and deactivated the recording devices  
10 that Mr. Howard was wearing?

11 A. I did.

12 Q. At some point on May 26th, 2008, were you stationed  
13 outside of the residence at 924 East Hyde Park?

14 A. Yes, I was.

15 Q. Approximately when did you arrive?

16 A. Approximately -- sometime after 9:00. We --

17 MR. CROWE: May I have a brief moment to approach  
18 and confer with the prosecutor?

19 THE COURT: Sure.

20 (Discussion had off the record.)

21 MR. CROWE: Thank you, your Honor.

22 BY MS. JENKINS:

23 Q. The East Hyde Park Boulevard address, the --

24 MS. JENKINS: I apologize, your Honor. One moment.

25 (Brief pause.)

1 BY MS. JENKINS:

2 Q. At some point on May 26th did you become stationed  
3 outside of the East Hyde Park residence?

4 A. Yes, I was.

5 Q. And was anyone else with you in your car?

6 A. Yes, Randy Panaca. He's a police officer from LaGrange.

7 THE COURT: Say that name again, please.

8 THE WITNESS: It's Randy, his first name, and his  
9 last name -- I'm going to butcher this but I think it's  
10 Panaca, P-A-N-A-C-A, if possible.

11 THE COURT: P-A-N-A-C-A?

12 And he's a Chicago policemen?

13 THE WITNESS: No, sir. He works for LaGrange  
14 Police Department.

15 THE COURT: I see.

16 BY MS. JENKINS:

17 Q. Sir, were you working with a team of agents that  
18 evening?

19 A. Yes, I was.

20 Q. And approximately how many others were stationed or  
21 assisting with your operation that night?

22 A. We had approximately eight others total.

23 Q. I am showing you -- well, actually, let me ask you this:  
24 When you positioned yourself -- when you arrived at that  
25 location, did you position yourself in a way that you could

Durante - direct

1 see the front entrance of the building?

2 A. No, I did not.

3 Q. Okay. Where were you generally located in terms of  
4 distance?

5 A. Within the block. I don't recall -- recall exactly  
6 where I was, but I was not in front of the residence. Within  
7 the block or so.

8 Q. Was anyone else from your team positioned to see the  
9 front of that residence?

10 A. Yes, there was.

11 Q. Who?

12 A. Task Force Officer Dwayne Johnson.

13 Q. And were you able to communicate with Task Force Officer  
14 Johnson?

15 A. Yes, I was, by radio.

16 Q. Okay. When you arrived at that location was it dark  
17 outside?

18 A. Yes, it was.

19 Q. And were you able to see through any other artificial  
20 lighting conditions?

21 A. There's some artificial lighting. It's a normal  
22 neighborhood, lit artificially.

23 Q. When you positioned yourself on surveillance outside of  
24 the residence, what did -- what did you do while Mr. -- let  
25 me back up and ask a better question.

Durante - direct

1           At some point did you become aware that Mr. Howard  
2       had arrived in the area?

3       A.   Yes. It was communicated to me -- we were on -- we  
4       maintained surveillance on Mr. Howard from our meet location  
5       to the house.

6       Q.   And while Mr. Howard -- did Mr. Howard eventually go  
7       into the residence on East Hyde Park?

8       A.   Yes, he did.

9       Q.   And what did you do during that time?

10      A.   Just waited in my car.

11      Q.   At some point did you learn that Mr. Howard had left the  
12      residence?

13      A.   Yes. Mr. Johnson communicated that to me.

14      Q.   Okay. Approximately how long would you estimate that  
15      Mr. Howard was inside of the residence?

16      A.   15 to 20 minutes.

17      Q.   Okay. And how did you learn that?

18      A.   It was communicated to me by radio by Mr. Johnson.

19      Q.   Could you see Mr. Howard when he left that residence  
20      from your position in your vehicle?

21      A.   No, I could not.

22      Q.   Okay. Could you see whether or not Mr. Howard was with  
23      anyone when he left -- when he left the building after the  
24      call-out that you received?

25      A.   No, I could not visually see that, no.



Durante - direct

1 Q. Following Mr. Howard's departure from the residence did  
2 you speak with him?

3 A. Yes, I did. He called me on the cell phone.

4 Q. Can you estimate approximately how long after you  
5 learned that Mr. Howard had left the building that you spoke  
6 to Mr. -- Mr. Howard by telephone -- by cell phone?

7 A. One or two minutes, walking distance from when he left  
8 the residence to when he got into his vehicle, the undercover  
9 vehicle.

10 Q. When you spoke to Mr. Howard where was he?

11 A. He just entered into his vehicle -- into the undercover  
12 vehicle.

13 MS. JENKINS: And at this time, your Honor, the  
14 government would propose, in light of your ruling in terms of  
15 offering all the evidence, about a two-minute clip of a  
16 portion of the recording that Mr. Howard made that would  
17 specifically cover the telephone call that Special Agent  
18 Durante is currently testifying about. And I believe counsel  
19 has an objection to that.

20 THE COURT: All right. How are you identifying  
21 that exhibit?

22 MS. JENKINS: At this time, your Honor, the  
23 government would refer to the recording as Government Exhibit  
24 Audio Recording.

25 THE COURT: Mr. Crowe, you have an objection to

Durante - direct

1 that?

2 MR. CROWE: Well, your Honor, what I discussed with  
3 Ms. Jenkins was that I had -- that the agent would testify --  
4 I had no objection to him testifying about telephone  
5 communications he had with the informant, Vincent Todd  
6 Howard. So that's what I suggest we do. I don't see any  
7 need to play the tape-recording. If something -- if it's a  
8 telephone call that the agent was a participant on, he can  
9 just directly testify to it.

10 MS. JENKINS: And I think the issue here, your  
11 Honor, is that based on your prior statements at the  
12 beginning of the hearing, you suggested that the government  
13 offer -- assume that no ruling would be made today, and then  
14 offer all forms of proof that it would eventually elicit in  
15 any form or fashion so that we don't have to revisit the  
16 issue.

17 Traditionally I would not play the recording, but  
18 in light of the fact that probable cause and identity is the  
19 issue --

20 THE COURT: I think what Mr. Crowe is saying is he  
21 has no objection to the agent simply testifying what was said  
22 during the conversation.

23 MS. JENKINS: And normally I would not have an  
24 objection to that, but because identity is such an important  
25 issue, and because portions of what is said on the recording

Durante - direct

1 will certainly corroborate Special Agent Durante's  
2 testimony -- and he can certainly identify what was being  
3 relayed to him in terms of the identity of the defendant, the  
4 vehicle that was being driven. Given that it's such a short  
5 clip and it certainly would not be the entirety of the  
6 recording, and because identity really is the central issue,  
7 the government would offer a short --

8 THE COURT: All right.

9 You don't have an evidentiary objection to it,  
10 Mr. Crowe, I take it?

11 MR. CROWE: Well, what I would object is that -- I  
12 don't dispute that the informant, Todd Vincent Howard, made  
13 the statements on the phone to the agent that are  
14 attributable to him. I do contest the truthfulness of those  
15 --

16 THE COURT: Well, you can do that. But you have no  
17 objection to the foundation, I take it?

18 MR. CROWE: No.

19 THE COURT: All right.

20 Okay. The exhibit is admitted and may be published  
21 to the Court.

22 And you, Mr. Crowe, the defense, maintains an  
23 objection as to the admissibility of it based on lack of  
24 credibility, lack of truthfulness, is that right?

25 MR. CROWE: Well, and --

Durante - direct

1 THE COURT: I'm trying to move this -- I think  
2 we're spending more time trying to move it along than we  
3 would if we just put the proofs --

4 MR. CROWE: There's just one point of clarification  
5 I would make, and that's the recording spans a matter of  
6 hours; it really covers the entire evening. Some of it are  
7 phone calls between the --

8 THE COURT: Hold it. Wait. Ms. Jenkins just  
9 represented she's going to play a snippet of that. How long  
10 is this?

11 MS. JENKINS: Less than two minutes.

12 THE COURT: What's it going to say?

13 MS. JENKINS: It's going to be -- from about  
14 21 minutes in it's going to be Mr. Howard's telephone call to  
15 Special Agent Durante indicating that he's leaving the Hyde  
16 Park residence and heading to the next location and  
17 identifying the defendant in a vehicle.

18 THE COURT: Do you have an objection to the  
19 foundation of that?

20 MR. CROWE: No, your Honor.

21 THE COURT: Do you have an objection otherwise  
22 regarding substantive evidence, any rule of evidence --

23 MR. CROWE: No.

24 THE COURT: Okay. You may play it.

25 MS. JENKINS: Thank you.

Durante - direct

1 (Brief pause.)

2 MS. JENKINS: Your Honor, I'm not aware of whether  
3 or not there's a -- I appear to be linked in, but I'm not  
4 sure if you can hear --

5 THE COURT: You cannot. I've got the room volume  
6 up and the evidence volume --

7 (Brief pause.)

8 THE COURT: Your office has been using the computer  
9 terminal at the prosecution table.

10 MS. JENKINS: I'll try that.

11 THE COURT: You want to try that?

12 (Brief pause.)

13 MS. JENKINS: Your Honor, just for the record, to  
14 be very clear, I am starting the recording at 21 minutes and  
15 15 seconds.

16 THE COURT: Thank you.

17 (Tape played.)

18 MS. JENKINS: Thank you for your patience, your  
19 Honor.

20 BY MS. JENKINS:

21 Q. Special Agent Durante, were you able to hear the  
22 recording that was just played from Government Exhibit Audio  
23 Recording?

24 A. Yes, I was.

25 Q. Did you recognize the voices in that recording?

1 A. Yes, as Vincent Howard.

2 Q. And how do you recognize Mr. Howard's voice?

3 A. I've been dealing with him since that time. I've heard  
4 him on the phone, talked to him in person as well.

5 Q. Do you recall having that telephone conversation with  
6 Mr. Howard shortly after he left the residence on Hyde Park?

7 A. Yes, I do.

8 Q. With regard to the content of what Mr. Howard relayed to  
9 you, when he said he tried to say Eric was here, what Eric  
10 did you understand him to be referring to?

11 A. Eric Dillard.

12 Q. And had you previously debriefed Mr. Howard concerning  
13 anyone named Eric with regard to your investigation into  
14 King's drug operation?

15 A. Yes. He identified -- identified him as Eric and E in  
16 the past.

17 Q. Okay. Let me break that down just a little bit.

18 When did you debrief Mr. Howard about an Eric?

19 A. Approximately a month prior to the transaction -- this  
20 transaction.

21 Q. So in April 2008?

22 A. Early April 2008.

23 Q. During the debrief with Mr. Howard did you show  
24 Mr. Howard any photographs?

25 A. Yes, I did, numerous ones.

1 Q. Showing you on your overhead screen -- or in the screen  
2 in front of you Government Exhibit Dillard Photo 2 -- do you  
3 see that photo in front of you?

4 A. Yes, I do.

5 Q. Do you recognize that photograph?

6 A. Yes, I do.

7 Q. Did you show this photograph to Mr. Howard in April  
8 of 2008 during your debrief?

9 A. Yes, I did.

10 Q. And what, if anything, or how, if any way, did  
11 Mr. Howard identify this photograph?

12 A. He just looked at it and said that's the guy he knew as  
13 Eric or E.

14 Q. During your debrief with Mr. Howard in April of 2008,  
15 was Eric Dillard the only person that you debriefed  
16 Mr. Howard about?

17 A. No, he wasn't.

18 Q. So getting back to the telephone conversation that we  
19 were just talking about, when Mr. Howard stated to you on the  
20 telephone that he tried texting to say Eric was here, did you  
21 understand who -- who did you understand Mr. Howard to be  
22 referring to?

23 A. Eric Dillard. That's the only Eric we talked about.

24 THE COURT: Hold on one second, Ms. Jenkins.

25 (Brief pause.)

1 BY MS. JENKINS:

2 Q. With regard to the photo that was just shown to you as  
3 Government Exhibit Dillard Photo 2, do you see the person in  
4 the courtroom today whose photograph you had previously shown  
5 to Mr. Howard?

6 A. Yes, I do.

7 Q. And could you please identify him for the record by an  
8 article of clothing that he's wearing today?

9 A. Mr. Dillard is wearing a white Polo shirt, collared  
10 shirt.

11 Q. Did you -- so you had a conversation with Mr. Howard --

12 THE COURT: Do you want the record to reflect that  
13 in-court identification, Ms. Jenkins?

14 MS. JENKINS: Thank you, your Honor. I appreciate  
15 that.

16 THE COURT: The record will so reflect.

17 MS. JENKINS: Thank you.

18 BY MS. JENKINS:

19 Q. When the -- when Mr. Howard indicated to you that he  
20 said that Eric was behind him in the Mountaineer, did you  
21 have any understanding of what Mr. Howard was referring to?

22 A. Yes. He was telling me that Eric Dillard was following  
23 him -- was following him in the Mountaineer, the Mercury  
24 Mountaineer -- what he believed to be a Mercury Mountaineer.

25 Q. I would like to focus on the remainder of your telephone



1 call with Mr. Howard following his departure from Hyde Park.

2 Did Howard relay specific information about where  
3 he was going?

4 A. Yes. He said he was going to the garage, which we had  
5 previously discussed before the transaction was to take place  
6 at.

7 Q. And what was the purpose of going to this parking  
8 garage?

9 A. To conduct the actual transaction of picking up the  
10 cocaine.

11 Q. And I believe we covered this, but did Mr. Howard relay  
12 whether or not Eric was going to be accompanying him or  
13 following him to that location?

14 A. Yes. He said he wanted to ride with him inside his --  
15 inside the UC vehicle, but he told him not to ride with him.  
16 He did that in part so he could communicate with me.

17 Q. And so it was your understanding from Mr. Howard that  
18 Mr. Dillard and Mr. Howard would travel to this parking  
19 location -- parking garage in separate vehicles?

20 A. Yes, and that Eric would be following him.

21 Q. What was your understanding of why Mr. Howard and the  
22 defendant were going to the parking garage?

23 A. To conduct a transaction of -- to receive five kilograms  
24 of cocaine.

25 Q. And did Mr. Howard relay information to you about the

1 kind of car that the defendant was driving?

2 A. Yes. He said he believed it to be a blue Mountaineer.

3 Q. Upon learning of this next meeting location, what did  
4 you do?

5 A. We maintained surveillance on the -- on Mr. Howard, and  
6 then we also identified the Mercury Mountaineer, which we  
7 identified on surveillance but we had previously identified  
8 that vehicle a month prior as being involved in Mr. King's  
9 organization.

10 Q. Where were the undercover vehicle and the Mountaineer --  
11 which direction were they headed -- or where were they  
12 headed?

13 A. I'm not sure what direction they left there, but they  
14 were heading both from Hyde Park to that downtown garage, and  
15 we followed them to that location.

16 THE COURT: Hold on one second, Ms. Jenkins. We're  
17 off the record.

18 (Discussion had off the record.)

19 THE COURT: Can I ask you all -- the jury has a  
20 verdict in this case.

21 MS. JENKINS: Sure.

22 THE COURT: We're off the record.

23 (Discussion had off the record.)

24 (Brief recess was taken.)

25 THE COURT: Okay. Please be seated.

1                   You may proceed, Ms. Jenkins.

2                   MS. JENKINS: Thank you.

3                   BY MS. JENKINS:

4                   Q. Special Agent Durante, I think when we broke you were  
5                   discussing the plan for relocating to a parking garage, is  
6                   that correct?

7                   A. Yes, we were.

8                   Q. I am showing you what's been marked for identification  
9                   as Government Exhibit Map 3. Do you recognize that  
10                  photograph?

11                  A. Yes, I do.

12                  Q. What is that?

13                  A. That's a picture of a parking garage on 8th Street.

14                  Q. Do you recognize that location?

15                  A. Yes, I do.

16                  Q. Did it have any significance to your operation that day?

17                  A. That's where we ended up, the CS Howard and conducting  
18                  the transaction with Dillard.

19                  Q. Did you personally travel to this location in your  
20                  vehicle?

21                  A. Yes, I did. We maintained surveillance from -- on the  
22                  CS and the Mercury from the time it left Hyde Park to that  
23                  parking garage.

24                  Q. Now, you mentioned the Mercury. Is this the same  
25                  Mercury that we heard referenced in the recording that we

1 just listened to?

2 A. Yes, it is.

3 Q. Was the Mercury following Mr. Howard in the undercover  
4 vehicle?

5 A. Yes, it was.

6 Q. Were you able to see the license plate of the Mercury  
7 Mountaineer after you identified it?

8 A. Yes, I was.

9 MS. JENKINS: I don't believe that I did but, your  
10 Honor, the government would move to admit Government Exhibit  
11 Map 3.

12 MR. CROWE: No objection, your Honor.

13 THE COURT: Very well. That exhibit is admitted.

14 (Said exhibit was received into evidence.)

15 BY MS. JENKINS:

16 Q. With regard to the Mercury Mountaineer, were you able to  
17 see the license plate of that vehicle after you identified  
18 it?

19 A. Yes, ma'am, I was.

20 Q. Showing you what has been marked for identification as  
21 Government Exhibit License Plate, do you recognize this  
22 photograph?

23 A. Yes, I do.

24 Q. What is it?

25 A. That's the photograph -- the rear license plate of the

1 Mercury Mountaineer, the blue one that was following Howard  
2 that night and the one we had previously identified before  
3 that night as well.

4 Q. Does it fairly and accurately identify or depict the  
5 license plate that was on the Mercury Mountaineer that you  
6 saw on May 26th, 2008?

7 A. Yes, it does.

8 MS. JENKINS: And the government would move to  
9 admit Government Exhibit License Plate.

10 THE COURT: Mr. Crowe?

11 MR. CROWE: No objection.

12 THE COURT: That's admitted.

13 (Said exhibit was received into evidence.)

14 BY MS. JENKINS:

15 Q. As of May 26th, 2008, were you familiar with this  
16 Mercury Mountaineer that was bearing this Kentucky license  
17 plate?

18 A. Yes, I was.

19 Q. How?

20 A. Mr. Howard identified it previously, and prior -- about  
21 a month prior to this transaction we were able to conduct  
22 surveillance on this Michael King that was driving this  
23 Mercury at the time that he went to go get a trap, a hidden  
24 compartment, installed in it. We were able to follow him and  
25 conduct surveillance on him at that time and -- while he was

1 driving this vehicle.

2 Q. So as of May 26th, 2008, you were aware that a trap  
3 compartment was located within this Mercury Mountaineer?

4 A. Yes, I was aware there was a hidden compartment in it  
5 and it was going to be used within the organization to  
6 transport cocaine from Chicago to Kentucky.

7 Q. In connection with your investigation had you and other  
8 members of your team determined whether or not this vehicle  
9 was registered to Eric Dillard?

10 A. Yes. It's not -- it is not registered to Eric Dillard.

11 Q. After the vehicles arrived in the area of the parking  
12 garage depicted in Government Exhibit Map 3, did you  
13 eventually arrive in the area?

14 A. Yes, I did.

15 Q. And what did you do when you arrived there?

16 A. I set up surveillance outside of the parking garage.

17 Q. Were you able to see either Mr. Howard's vehicle or the  
18 Mercury Mountaineer once they went inside the parking garage?

19 A. No, we were not.

20 Q. Were you eventually made aware of the fact that the  
21 vehicles left the parking garage?

22 A. Yes, I was.

23 Q. Can you estimate about how long the vehicles were inside  
24 the parking structure, based on your collective knowledge  
25 from your fellow law enforcement?

1 A. About five minutes -- five to ten minutes.

2 Q. In addition to the Mountaineer and Mr. Howard's vehicle  
3 leaving the garage, did any other vehicle of interest exit  
4 that garage?

5 A. Yes. The maroon GMC SUV.

6 Q. And how did you know that this maroon GMC was involved  
7 in the transaction?

8 A. It was -- I was told it was -- followed them outside of  
9 the garage, and Howard communicated with me and told it --  
10 told me it was involved with the transaction as well.

11 Q. And did you have this conversation with Mr. Howard by  
12 cell phone?

13 A. Yes, I did.

14 Q. What did Howard relate to you concerning his meeting  
15 inside the garage once he departed the area -- or departed  
16 the garage?

17 A. He said he went up with Eric Dillard -- or Eric -- he  
18 said he went up with Eric. He -- Eric removed the duffle bag  
19 from the Mountaineer trap location; it got stuck, he had a  
20 hard time removing it, and proceeded to give that duffle bag  
21 to the Hispanic male that was driving the GMC.

22 In return for giving him the duffle bag, which he  
23 saw United States currency and both currency in, the Hispanic  
24 male gave what he believed to be 25 kilograms of cocaine to  
25 Eric Dillard, at which time Eric Dillard -- or, I'm sorry,

1 Howard took seven kilograms of cocaine and Eric Dillard kept  
2 the rest and put them inside the Mercury -- the trap location  
3 inside the Mercury.

4 Q. So Mr. Howard confirmed for you that he had seven  
5 kilograms of cocaine with him in his vehicle?

6 A. Yes. He confirmed that he took seven and Eric took the  
7 rest of them.

8 Q. And what did Mr. Howard say that Eric did with the  
9 remaining -- with the remaining kilograms of cocaine obtained  
10 from the driver of the GMC?

11 A. He said he had removed them from the duffle bag. And he  
12 also mentioned -- he was not wearing gloves, so he had made a  
13 comment to him, You're not wearing gloves, because he took --  
14 physically took them out of the duffle bag and put them  
15 inside the trap that was located inside the Mercury, the  
16 hidden compartment.

17 Q. So was it your understanding, following your  
18 conversation with Mr. Howard, that there were kilograms of  
19 cocaine located within the Mercury Mountaineer?

20 A. Yes. We had a discussion about how many and he wasn't  
21 sure. We were going back and forth on the exact numbers, but  
22 we -- we understood that there was the rest of the kilograms  
23 inside the Mercury.

24 Q. Once the -- once Mr. Howard left of the garage, where  
25 did he go?



Durante - direct

1 A. He exited the garage and was heading back to Hyde Park,  
2 Claude McKay's residence.

3 THE COURT: I'm sorry. I didn't understand that.  
4 Heading back to?

5 THE WITNESS: To the original residence that he  
6 started at in Hyde Park, which is Claude McKay's residence.

7 THE COURT: The 926 residence?

8 THE WITNESS: 924, yes, sir.

9 THE COURT: 924.

10 BY MS. JENKINS:

11 Q. Did you and other members of your team follow Mr. Howard  
12 back to the East Hyde Park residence?

13 A. Yes, we did.

14 We also attempted to follow the GMC and the  
15 Mercury, which we lost sight of; we didn't have enough  
16 manpower. And we followed the -- Mr. Howard all the way from  
17 the garage to -- back to the residence.

18 Q. Did you eventually arrive back to the East Hyde Park  
19 residence?

20 A. Yes, I did.

21 Q. This is the same residence that the transaction started  
22 at?

23 A. Yes, ma'am, it was.

24 THE COURT: Do you mind if I ask a question? I'm  
25 not clear.

Durante - direct

1           You say you lost the maroon GMC and the other car.  
2       Was that the Mountaineer?

3           THE WITNESS: Yes, sir. All three vehicles exited  
4       the garage. We --

5           THE COURT: And you lost the Mountaineer and the  
6       GMC?

7           THE WITNESS: Yes. I was trying to get a location  
8       on the --

9           THE COURT: I think you may have said you lost the  
10      Mercury.

11          THE WITNESS: Correct.

12          THE COURT: The Mercury was Mr. Howard's car, and  
13      you had that in view, didn't you?

14          THE WITNESS: No, sir. The Mercury Mountaineer is  
15      the --

16          THE COURT: Oh, I see. Got it.

17          THE WITNESS: -- the one that Eric Dillard was  
18      driving.

19          THE COURT: So the Mercury is a Mountaineer?

20          THE WITNESS: Yes, sir. I'm sorry.

21          THE COURT: Got it.

22      BY MS. JENKINS:

23      Q. And just to be clear, Mr. Howard exited the garage in  
24      his vehicle, is that correct?

25      A. Yes. Yes, ma'am.

Durante - direct

1 Q. The Mercury Mountaineer exited the garage, correct?

2 A. Correct.

3 Q. And the GMC that Mr. Howard had identified for you as  
4 the car that these vehicles had met with, also exited the  
5 garage, correct?

6 A. Correct.

7 THE COURT: Which two did you lose?

8 THE WITNESS: The GMC, we maintained surveillance  
9 on it for a short time and lost it. The Mercury, I was  
10 trying to obtain -- over the phone you'll hear on the  
11 conversation where it was. We lost that as well.

12 THE COURT: Got it.

13 BY MS. JENKINS:

14 Q. So the only car you were ultimately following back to  
15 East Hyde Park is Mr. Howard in his undercover vehicle?

16 A. Correct, ma'am.

17 Q. Did you eventually arrive back to East Hyde Park?

18 A. Yes, I did.

19 Q. Did Mr. Howard eventually arrive back to East Hyde Park?

20 A. Yes, he did.

21 Q. Did the Mercury Mountaineer ever return back to East  
22 Hyde Park while you were there?

23 A. Not when I was present, no.

24 Q. Okay. What did Mr. Howard do when he returned to the  
25 East Hyde Park location?

1 A. He took two kilograms of cocaine inside -- from the  
2 vehicle inside the apartment to give to Claude McKay.

3 Q. Following this meeting inside the residence of East Hyde  
4 Park, did you and other members of your team meet with  
5 Mr. Howard?

6 A. Yes, I did.

7 Q. Did you recover anything from Mr. Howard?

8 A. Yes. I recovered a duffle bag, a black duffle bag, with  
9 five kilograms of cocaine with the word "Mary" on it on the  
10 outside. And I also recovered the previous recorder that I  
11 provided to him.

12 Q. Did you search Mr. Howard and his undercover vehicle  
13 following his meeting -- following his participation in the  
14 transaction that day?

15 A. Yes. I searched him and then debriefed him.

16 Q. And during your debrief did you confirm with Howard that  
17 the Eric he had previously referred to was, in fact, the  
18 defendant whom you had previously showed him a photograph of?

19 A. Yes, I did.

20 Q. Special Agent Durante, I just want to ask you a few  
21 questions concerning the attempts that you made in order to  
22 locate the Mercury Mountaineer later that evening.

23 Did you and other members of your team make an  
24 attempt to locate the Mercury Mountaineer later that evening?

25 A. Yes, we did.

1 Q. What steps, if any, did you and other members of your  
2 team take in order to locate that vehicle?

3 A. I sent my team members down to Y2K Performance because I  
4 had previously established that is Mr. Dillard's business. I  
5 established that Mr. Dillard was driving the vehicle, so I  
6 sent other team members down to his business to locate the  
7 Mercury, because that's where I assumed would be -- that's  
8 where it would be.

9 Q. Showing you what's been marked for identification as  
10 Government Exhibit Map 5, do you recognize that exhibit?

11 A. Yes, I do.

12 Q. What is that?

13 A. It's a bird's eye view of Mr. Dillard's Y2K Performance  
14 located at 16114 Vandustrial Lane in South Holland, Illinois.

15 Q. And does this overhead photograph fairly and accurately  
16 depict, in general terms, the location that you sent two  
17 members of your team to on the evening of May 26th, 2008?

18 A. Yes, it does.

19 MS. JENKINS: The government would move to admit  
20 Government Exhibit Map 5.

21 THE COURT: Is that Vandustrial Lane?

22 THE WITNESS: Yes, sir.

23 THE COURT: Any objection, Mr. Crowe?

24 MR. CROWE: No, your Honor.

25 THE COURT: That exhibit is admitted.

1 MS. JENKINS: Thank you.

2 (Said exhibit was received into evidence.)

3 BY MS. JENKINS:

4 Q. Did you eventually arrive to this address on Vandustrial  
5 Lane in South Holland?

6 A. Yes, I did.

7 Q. When you arrived there did you observe whether or not  
8 the Mercury Mountaineer was at that location?

9 A. Yes, I did.

10 Q. Where was it, generally speaking?

11 A. I don't recall exactly. It was in the parking lot  
12 across the way somewhere.

13 Q. Did you communicate with members of your team whom you  
14 had sent before you concerning whether or not Mr. Dillard had  
15 been located?

16 A. Yes, I did.

17 Q. And what did you learn about whether or not Mr. Dillard  
18 had been located at this Vandustrial Lane commercial  
19 property?

20 A. I learned that they set up surveillance on the property  
21 and the Mercury, and they saw Mr. Dillard exit the business  
22 and travel to a gas station to meet up with another  
23 individual, who was later identified as Devan Neal. And  
24 after that meeting they subsequently detained him.

25 Q. Subsequently detained who?

Durante - direct

1 A. Mr. Dillard.

2 Q. Okay. When -- based on your conversations with your  
3 fellow law enforcement officers, when other agents observed  
4 Mr. Dillard leave the residence -- leave the business on  
5 Vandustrial Lane, was he driving the Mercury Mountaineer?

6 A. No. He was driving his -- a personal vehicle of his.

7 Q. He was driving a different vehicle?

8 A. Yeah. I'm not sure which one he was, but it was not the  
9 Mercury. The Mercury did not move.

10 Q. And that was actually going to be my next question.

11 Is it -- during the time that you were present  
12 outside Vandustrial Lane, was the Mercury Mountaineer outside  
13 the business residence that you had associated with  
14 Mr. Dillard?

15 A. Yes, it was.

16 Q. At some point Mr. Dillard was detained and brought back  
17 to the Vandustrial location, is that correct?

18 A. That is correct.

19 MS. JENKINS: Okay.

20 At this time, your Honor, the government would  
21 tender the witness for cross-examination. I think that given  
22 the stipulations and agreements the parties had on the front  
23 end, there really is no need to get into any additional  
24 information based on the parties' agreement. So we would  
25 tender the witness at this time.

1 THE COURT: The issue, as you see it, is whether or  
2 not there was probable cause to arrest the defendant?

3 MS. JENKINS: Correct.

4 THE COURT: Very well.

5 Mr. Crowe?

6 MR. CROWE: Thank you, your Honor.

7 CROSS EXAMINATION

8 BY MR. CROWE:

9 Q. Agent Durante, what did you do to prepare for your  
10 testimony today?

11 A. I went over it with the prosecuting attorney and  
12 reviewed my reports.

13 Q. So did you review all the DEA reports that you authored  
14 according to Box 5 of those reports?

15 A. No, sir, I didn't.

16 Q. You did not review them all?

17 A. All of them? No. Not in this investigation, no.

18 Q. I'm sorry?

19 A. Not the scope of the entire investigation because  
20 there's numerous reports that I authorized. Most of them --  
21 it's a large scale investigation. Just the limited few that  
22 had to deal with Mr. Dillard in this transaction and the  
23 previous debriefings of the CF.

24 MR. CROWE: Your Honor, may I approach the witness  
25 to show him some DEA reports and ask him which ones he



1 reviewed?

2 THE COURT: Sure.

3 MS. JENKINS: Your Honor, I think the ELMO will  
4 allow everyone to see --

5 THE COURT: I can see it if you put it on the ELMO  
6 and --

7 MR. CROWE: Oh, okay. Fine.

8 BY MR. CROWE:

9 Q. So this is the document I will be referring to. This is  
10 defendant Eric Dillard's amended Bates numbered exhibits in  
11 support of his motion to suppress. Docket number is 87.

12 Here's the cover page to Exhibit 1. The first  
13 document -- these documents are -- are you familiar with the  
14 term Bates numbered?

15 THE COURT: Let me do this: We're trying to save  
16 some time. There's no objection. Can you let him go through  
17 those and tell you which ones -- after he reviews them, which  
18 ones he looked at?

19 BY THE WITNESS:

20 A. Sir, if you just show me the title of the first -- of  
21 the front, right there, the title, I can tell you yes or no.

22 THE COURT: Why don't we do this: Take the entire  
23 package, if you will.

24 THE WITNESS: Okay.

25 MR. CROWE: Okay. Great, your Honor.

1 BY MR. CROWE:

2 Q. What I'm going to do is ask you to look at the numbers  
3 ED 1 through 18, okay?

4 A. Okay.

5 Q. I'll show you where the numbers are.

6 THE COURT: Why don't you just give him that and  
7 let him tell us which ones he reviewed.

8 MR. CROWE: I will.

9 (Document tendered.)

10 THE COURT: What exhibit designation did you give  
11 that, Mr. Crowe?

12 MR. CROWE: That's Exhibit 1 to my motion to  
13 suppress. And I'll make it Defense Exhibit 1 for the  
14 hearing.

15 THE COURT: We'll call it Defendant's 1?

16 MR. CROWE: Yes. Thank you.

17 THE COURT: And that's Bates 1 through 18?

18 MR. CROWE: Yes.

19 (Brief pause.)

20 BY THE WITNESS:

21 A. Okay, sir. Yeah, I reviewed all these reports that have  
22 my signature.

23 BY MR. CROWE:

24 Q. All right. Thank you.

25 In preparation for your testimony did you also

1 listen to the CD-ROM of the Vincent Todd Howard body  
2 recording?

3 A. Portions of it.

4 Q. Pardon me?

5 A. Portions of it, yes.

6 Q. Now, you also testified that you placed -- or provided  
7 Howard with an electronic recording device he was to wear on  
8 his body?

9 A. Yes, sir, I did.

10 Q. And I believe you testified that device performed two  
11 functions. One was it recorded material, and the second is  
12 it served as a transmitter, is that correct?

13 A. Yes, sir.

14 Q. Now, having listened to at least portions of the CD-ROM  
15 of the recording made by the electronic recording device that  
16 you gave to Howard, were you able to hear anything beyond  
17 what is on the CD-ROM?

18 A. No, sir. I don't recall hearing anything from the  
19 transmitter. That's why I communicated with them over cell  
20 phone.

21 Q. Okay. So, in essence, you didn't really hear anything  
22 through the live contemporaneous transmission from the  
23 recording device?

24 A. Not live, no, sir, not at that time.

25 Q. Now, Howard officially became a DEA informant on

1 February 26th of 2008, is that correct?

2 A. Around that time.

3 Q. Now, briefly, can you tell us what were the  
4 circumstances that led up to his becoming a confidential  
5 informant?

6 MS. JENKINS: Objection, your Honor. I think we've  
7 covered this. And I'm also not sure how it's relevant to the  
8 probable cause.

9 THE COURT: How is this relevant?

10 MR. CROWE: Well, it's, I think, going to show that  
11 Howard was -- the DEA knew a lot about him, Howard was a  
12 major trafficker and they told him he was looking at a  
13 significant, like 15-year mandatory minimum sentence, and  
14 that the only way he could reduce that was to produce drug  
15 seizures and bodies, meaning arrests. So that gives  
16 confidential Howard a huge motive to fabricate.

17 THE COURT: Ms. Jenkins?

18 MS. JENKINS: Your Honor, I think the witness has  
19 already established that Mr. Howard was cooperating for the  
20 purpose of a reduction in his own sentence.

21 THE COURT: I agree.

22 MS. JENKINS: Certainly we're happy to stipulate to  
23 what that ultimate sentence was. Mr. Crowe was certainly  
24 aware of that.

25 THE COURT: Why don't we quickly move on.

1 MR. CROWE: Okay.

2 THE COURT: What do you expect him to testify --  
3 would you agree to that last statement Mr. Crowe just made?

4 MS. JENKINS: Could you repeat it? I think I can.

5 THE COURT: Would you repeat it?

6 MR. CROWE: Sure.

7 That the DEA told Mr. Howard that evidence that he  
8 was a major trafficker, moving, you know, 60 kilos a month  
9 and that he was looking at a mandatory minimum sentence of  
10 15 years or more, and the only way he could reduce that was  
11 by cooperating with the DEA, which meant providing  
12 information and performing actions that led to the seizure of  
13 large quantities of narcotics and a significant number of  
14 arrests.

15 THE COURT: Will you stipulate the DEA told him  
16 that?

17 MS. JENKINS: I will agree -- I'm not trying to  
18 make this difficult.

19 I will agree that Mr. Howard was told that he was  
20 -- that the DEA was aware that he was involved in large  
21 quantities of cocaine trafficking activity and that he would  
22 be subject to a substantial sentence, including a potential  
23 mandatory minimum of ten years.

24 I think that captures what he says, but I don't  
25 know specifically whether or not he was told --

1 THE COURT: Will you accept that stipulation?

2 MR. CROWE: Yes.

3 THE COURT: All right. Very well. The record will  
4 so reflect.

5 BY MR. CROWE:

6 Q. Among other things, Howard told you that Michael King  
7 was supplying him with large quantities of narcotics, is that  
8 correct?

9 A. Yes, it is.

10 Q. And he also told you that he was not the only person to  
11 whom King was supplying substantial quantities of narcotics,  
12 is that correct?

13 A. That's correct.

14 Q. And one of the people to whom King was supplying  
15 substantial quantities of narcotics was Claude McKay?

16 A. Yes, it was.

17 Q. Now, at some point on May 26th of 2008 Howard telephoned  
18 you and advised you that King himself and Claude McKay would  
19 be involved in picking up five kilograms of cocaine later  
20 that day, is that correct?

21 A. That's correct -- that King was supposed to give him  
22 five kilograms, correct.

23 Q. All right. But it was your understanding that King did  
24 not yet have it in his possession at that time?

25 A. Right, correct.

1 Q. But that King was going to take action, or have others  
2 take action on his behalf, to acquire possession of --

3 THE COURT: I think that's all been established.  
4 Let's avoid, if you can, rehashing direct.

5 MR. CROWE: Okay.

6 BY MR. CROWE:

7 Q. And the people who were going to be involved in the  
8 acquisition of the cocaine were -- there were three: Howard  
9 himself, Michael King and Claude McKay, correct?

10 A. That's all I knew of, correct.

11 Q. There was no mention of a fourth person?

12 A. No, there wasn't.

13 Q. And he never -- he did not mention Eric Dillard's name  
14 at that time?

15 A. Who did not mention --

16 Q. Howard.

17 A. Not during that time, no.

18 Q. During -- on approximately May 26th of 2008, based upon  
19 your work as a DEA agent did you have a pretty good idea of  
20 what the wholesale price was for a kilogram of cocaine in  
21 Chicago at that time?

22 MS. JENKINS: Objection, relevance.

23 THE COURT: What's the relevance of that?

24 MR. CROWE: In terms of the amount of cash that  
25 would likely have been --

1 THE COURT: All right.

2 You may answer.

3 BY THE WITNESS:

4 A. I probably did. I can't recall -- I'm sure I did. I  
5 can't recall.

6 THE COURT: Do you have a number? You can lead  
7 him.

8 BY MR. CROWE:

9 Q. Say between 20 and \$23,000 per kilogram.

10 A. Approximately, yeah. That -- right now it's hard to say  
11 what it was back then. But back then I would have known.  
12 That sounds approximately right.

13 THE COURT: I'll take the answer 20 to 23K --  
14 23,000.

15 BY MR. CROWE:

16 Q. Let's assume it was a low figure of 20,000, just to make  
17 the math easy.

18 So if, you know, King, McKay and Howard are buying  
19 five kilos -- well, taking the low number 20,000, that would  
20 mean they would have \$100,000 in cash?

21 MS. JENKINS: Objection, your Honor. The issue  
22 here is probable cause and not --

23 THE COURT: I understand that. You wanted to  
24 establish the amount in the duffle bag. I can -- you can  
25 argue that five times 20,000 is a hundred thousand dollars.



1 MR. CROWE: Okay. Thank you, your Honor. I'll  
2 move on.

3 THE COURT: Okay.

4 BY MR. CROWE:

5 Q. Prior to your setting up your surveillance in front of  
6 924 Hyde Park Boulevard, did you ask Howard whether he knew  
7 what vehicles were going to be used for the pickup of the  
8 five kilograms of cocaine later that day?

9 A. The only one that we knew were going to be used was our  
10 UC vehicle.

11 Q. So you did not know the Mountaineer was going to be  
12 used --

13 A. No, I did not.

14 Q. -- before it actually was used?

15 A. No, I did not.

16 THE COURT: We're off the record.

17 (Discussion had off the record.)

18 BY MR. CROWE:

19 Q. Now, for purposes of brevity, my understanding is that  
20 -- well, you testified, I believe, there were eight law  
21 enforcement agents involved in this surveillance operation,  
22 is that correct?

23 A. Approximately, correct.

24 Q. And some of them were not DEA agents? Some of them were  
25 local law enforcement agents?

1 A. Task force officers, correct.

2 Q. For the purpose of my questions being simple, I would  
3 like to just refer to all of them as agents, even if they  
4 were not an actual agent. Is that okay with you?

5 A. That's fine.

6 Q. Now, at approximately 7:00 o'clock p.m. on May 26th of  
7 2008, you and the other, I believe, seven agents involved had  
8 a meeting to formulate a surveillance plan, is that correct?

9 A. Approximately.

10 Q. All right.

11 A. Yes, it is approximately that time.

12 Q. At that time did you -- during that meeting did you and  
13 the other agents decide what positions the various members of  
14 the team would take for purposes of conducting surveillance  
15 on 924 Hyde Park Avenue?

16 A. Yes.

17 Q. At the time of this preparatory meeting, were you  
18 familiar with the vicinity of 924 Hyde Park Avenue?

19 A. Yes, I was.

20 Q. And I believe you testified on direct examination that  
21 from where you were positioned for surveillance purposes, you  
22 could not see the entrance of 924 Hyde Park Avenue?

23 A. Correct.

24 Q. Now, having read the DEA reports, is it accurate to say  
25 that the only one of the eight agents conducting the

1 surveillance, who actually could see the front entrance of  
2 924 Hyde Park Avenue, was Sergeant Dwayne Johnson?

3 A. That's correct.

4 Q. So there were eight agents on surveillance and only one,  
5 Sergeant Johnson, could actually see the entrance of 924 Hyde  
6 Park Boulevard?

7 A. Correct.

8 Q. Was Mr. Dillard's name mentioned at any time during your  
9 pre-surveillance prep meeting?

10 A. No, it was not.

11 Q. Now, all of the reports that I showed you, which are  
12 Bates numbered 1 through 18, on the last page contain a  
13 section entitled Indexing. Are you familiar with that  
14 section?

15 A. Yes, sir, I am.

16 Q. All right. And is it true that in the Indexing section  
17 of each of those reports it lists the names of the subjects  
18 who are referenced in the reports?

19 A. Yes, sir, it does.

20 Q. Is it also true that in the Indexing section, when it  
21 lists the name of a subject who is referenced in the report,  
22 it also lists something called their NADDIS, N-A-D-D-I-S,  
23 report number?

24 MS. JENKINS: Objection, your Honor. I don't see  
25 the relevance of a NADDIS number.

1 THE COURT: What's the relevance of all of this,  
2 Mr. Crowe?

3 MR. CROWE: Well, I'm trying to figure out what  
4 information the agent had available to him, what he actually  
5 looked at in terms of what he knew --

6 THE COURT: Well, he told you he looked at Bates  
7 Nos. 1 through 18.

8 MR. CROWE: Yes. He may have looked at other  
9 things.

10 THE COURT: Why don't you ask him that.

11 MR. CROWE: All right.

12 BY MR. CROWE:

13 Q. Well, did you -- all right.

14 Prior to conducting the surveillance of 924 Hyde  
15 Park Boulevard, did you look at a NADDIS report regarding  
16 Michael King?

17 A. Yes, I did.

18 Q. And did you look at a NADDIS report regarding Claude  
19 McKay?

20 A. Yes, I did.

21 Q. Did you look at a NADDIS report regarding -- you  
22 probably did this before, but at any time did you look at a  
23 NADDIS report regarding Vincent Todd Howard?

24 A. Yes, I did.

25 Q. Before you conducted your surveillance did you look at a

1 NADDIS report regarding Eric Dillard?

2 A. Yes. Previous to this investigation -- previous to that  
3 day, yes.

4 Q. And that would be in April of 2008?

5 A. Most likely, or shortly thereafter, after we identified  
6 him in earlier debrief.

7 Q. In the context of your preparing for the surveillance of  
8 924 Hyde Park Boulevard on May 26th of 2008 -- well, between  
9 when Mr. Howard called you and notified you that there was  
10 going to be a meeting at that location to discuss the plans  
11 to acquire the cocaine and when you set up your surveillance,  
12 did you look at the NADDIS regarding Mr. Dillard during that  
13 timeframe?

14 A. No, I didn't.

15 Q. What information is contained in a NADDIS report?

16 MS. JENKINS: Objection, your Honor. We --

17 THE COURT: I beg your pardon? What information is  
18 contained in what report?

19 MR. CROWE: In a NADDIS.

20 MS. JENKINS: Your Honor, first of all, we actually  
21 dealt with this issue in a pretrial ruling, whereby Mr. Crowe  
22 sought production of the NADDIS report, and the government  
23 responded as to all the reasons why it need not be produced  
24 and your Honor ruled that it need not be produced. So I  
25 don't know where we're going with this.

1 THE COURT: Where are you going with this,  
2 Mr. Crowe?

3 MR. CROWE: Well, I would like to see -- I think,  
4 as I said in my motion -- and, actually, in my current motion  
5 I'm renewing my motion for production of the NADDIS.

6 I think it says -- it delineates all the known  
7 associations someone like Michael King, for example, may have  
8 had --

9 THE COURT: You've asked him what he looked at  
10 regarding the defendant prior to the May 26th, '08 events.  
11 He told you, hasn't he?

12 MR. CROWE: All right. He said he did not look at  
13 the NADDIS. So I'll move on.

14 THE COURT: Okay.

15 BY MR. CROWE:

16 Q. So prior to your conducting surveillance at 924 Hyde  
17 Park Boulevard, did Mr. Dillard's name come up in any way?

18 A. No, it did not.

19 Q. Did you see Mr. Dillard arrive in the vicinity of 924  
20 Hyde Park Avenue during the evening hours of May 26th, 2008?

21 A. No, I didn't.

22 Q. So you have no idea what vehicle he arrived in?

23 A. No, I don't.

24 Q. Did you or any members of your team drive down the block  
25 of 924 Hyde Park Avenue and attempt to look at the license

1 plate numbers of cars that were parked there and see if there  
2 were people parked there who didn't live in the area?

3 A. No. That wouldn't be -- that wouldn't be a typical --

4 Q. That would not be typical?

5 A. No. We don't check license plates like that.

6 Q. Did you see a red pickup truck parked in the vicinity of  
7 924 Hyde Park Avenue?

8 A. No, I didn't.

9 Q. Did you see the informant, Howard, depart 924 Hyde Park  
10 Avenue at approximately 9:40 p.m. on May 26th, 2008?

11 A. No, I didn't.

12 Q. Now, at that time were you in -- were you in any  
13 communication with Sergeant Dwayne Johnson?

14 A. Yes, I was.

15 Q. Was he contemporaneously reporting his observations of  
16 what was transpiring at the entrance of 924 Hyde Park Avenue  
17 to you?

18 A. Yes, he did.

19 Q. At approximately 9:40 p.m. did Sergeant Dwayne Johnson  
20 make any communication to you regarding observations he made  
21 regarding the entrance of 924 Hyde Park Avenue?

22 A. He said that the CS and another black individual male  
23 came out with him -- exited that property.

24 Q. And would it be accurate to say that he said an unknown  
25 black male with a dark complexion exited with Howard?

1 A. I don't recall exactly how -- I don't remember him  
2 describing him. I just remember unknown black individual,  
3 black male.

4 Q. So you don't remember -- if Agent Johnson provided a  
5 physical description of that person, you don't remember what  
6 it was?

7 A. He might have but -- that would be normal but I can't --  
8 sitting here today I can't recall what he provided, if he  
9 provided like an exact description or what he said.

10 Q. Now, between the time when Howard went inside 924 Hyde  
11 Park Avenue, which -- could I just call it the McKay  
12 residence?

13 A. That's fine.

14 Q. Okay. Between when Howard went inside the residence and  
15 -- until when he exited at approximately 9:40 p.m., the DEA  
16 had no independent knowledge of what was transpiring inside  
17 McKay's residence, is that correct?

18 A. That's correct.

19 Q. And the only source of information the DEA had as to  
20 what had transpired within McKay's residence during that time  
21 was Howard, is that correct?

22 A. That's correct.

23 Q. Did you -- at approximately 9:40 p.m. or shortly  
24 thereafter, again on May 26th of 2008, did you see Howard  
25 drive the undercover vehicle away from the vicinity of the



1 McKay residence?

2 A. Yes, after a short period we maintained -- Johnson saw  
3 it and then we picked up surveillance on him, correct.

4 Q. What was the approximate total time that you and the  
5 other seven agents were conducting surveillance on the McKay  
6 residence? Just an estimate or ballpark is fine.

7 A. I mean, we left to the residence around 9:00, so it  
8 wasn't that long. 9:00 to 9:40 we think he approximately  
9 came down, so I would say under an hour.

10 Q. All right. Roughly 40 minutes, it sounds like?

11 A. Roughly.

12 Q. Okay.

13 During the time you were conducting surveillance of  
14 the entrance of the McKay residence, did you observe other  
15 people going into and out of that location -- wait. I'm  
16 sorry. You didn't see the location.

17 A. Right.

18 Q. Let me withdraw that question.

19 A. I didn't have visual on the front, and I don't recall  
20 him -- he wouldn't have called anybody out to notify because  
21 it wasn't pertinent to what we were doing. So I can't answer  
22 -- I really can't answer that.

23 Q. So did Sergeant Johnson, who could see the entrance of  
24 924 Hyde Park Avenue, report that during the time of your  
25 surveillance he saw other people going into and out of that

1 location?

2 A. He didn't report -- he wouldn't have. It's not  
3 pertinent to what we were doing.

4 Q. May 26th was Memorial Day, is that correct?

5 A. Yes, sir, it was.

6 Q. At some point did you become aware that Claude McKay was  
7 hosting a Memorial Day barbeque at that time?

8 A. I think he later told us, Mr. McKay did.

9 Q. Do you remember, you know, what, if anything, Sergeant  
10 Johnson conveyed to you over the radio regarding any  
11 observations he made regarding Howard leaving the McKay  
12 residence at 9:40 p.m. on May 26th?

13 A. Not specifically. Just that he was leaving and another  
14 male with his him, black male.

15 Q. When you say another man was with him -- well, let me  
16 rephrase.

17 Did the substance of Mr. Johnson's communication  
18 say that the other person was leaving just -- at the same  
19 time as Howard or that they were together, meaning apparently  
20 acting with some common purpose?

21 A. It led me to believe that they were together, that's  
22 what he was saying, came out with him, meaning that he was  
23 with him.

24 Q. Did Sergeant Johnson at that time explain why he  
25 believed that Howard and the unknown black male were together

1 as opposed to just coincidentally leaving at the same time?

2 A. No. He didn't go into that detail.

3 Q. So your -- just by today, your best recollection of the  
4 description Sergeant Johnson gave of the person who left the  
5 McKay residence with Howard is that he was a large, black  
6 male?

7 A. Yeah. I mean, it was six years ago, so it's --

8 Q. I understand. But that's your best recollection as you  
9 sit here today?

10 A. Black unidentified male, that's what I remember.

11 Q. Okay. Would you agree that that description would fit a  
12 lot of people?

13 THE COURT: I'll take judicial notice of that.  
14 Let's move on.

15 MR. CROWE: Okay. Thank you, your Honor.

16 Your Honor, with the Court's permission I would  
17 like to show the witness some photographs of various  
18 individuals that the government has provided me --

19 THE COURT: All right.

20 MR. CROWE: -- and see if he recognizes them.

21 THE COURT: Sure.

22 What exhibits are those?

23 BY MR. CROWE:

24 Q. Now, just to be clear, on each of these photos in the  
25 lower right-hand corner there's a marking that identifies the

1 individual depicted in the photo --

2 THE COURT: Oh, come on. We can move on.

3 Take a look at those. Do you recognize any of  
4 those people?

5 BY MR. CROWE:

6 Q. I want to know if you recognize any of those people  
7 prior to or on May 26th of 2008, and, if so, in what context?

8 A. I recognize -- this is Michael King. He's the target of  
9 an investigation --

10 THE COURT: What's the Government Exhibit on that?

11 THE WITNESS: King Photo, sir.

12 THE COURT: King Photo. Got it.

13 BY THE WITNESS:

14 A. Target --

15 BY MR. CROWE:

16 Q. How is it you recognize that that's King?

17 A. Throughout the investigation I identified him earlier as  
18 a large scale narcotics trafficker.

19 Q. Okay. And the next one, please?

20 A. Howard Photo. It's -- that's my -- the cooperator  
21 source. I obviously recognize him through meeting with him.

22 Claude McKay, also part of a large scale  
23 investigation, one of Michael King's workers or --

24 Q. Were you familiar with him prior to receiving the  
25 telephone call from Howard on May 26th of 2008?

1 A. Yes, I was.

2 Q. Okay.

3 A. And Devan Neal, Mr. Howard identified him previously as  
4 a wholesale supplier of cocaine down in Kentucky Michael King  
5 was dealing with. He would give him kilograms of Kentucky --  
6 of cocaine to sell in Kentucky.

7 Q. Okay. Thank you. I'll retrieve the photos.

8 Now, you just testified that Vincent Todd Howard  
9 told you that Devan Neal was involved in transporting  
10 multi-kilograms of cocaine that he obtained from King from  
11 Chicago to Kentucky.

12 A. Yes.

13 Q. Did Howard also tell you that for the purposes of  
14 transporting the cocaine from Chicago to Kentucky, that Devan  
15 Neal used a -- often used a blue Mercury Mountaineer?

16 A. He told me that -- actually, the Mercury was new --  
17 newly installed -- Mr. King was getting a trap installed for  
18 Mr. Neal, yes, that's correct, but a newly involved vehicle.

19 Q. Did Howard also tell you, in fact, that the specific  
20 purpose of installing the trap in the blue Mountaineer was to  
21 facilitate Devan Neal's transportation of cocaine from  
22 Chicago to Kentucky?

23 A. Yes, he did.

24 Q. Mr. Howard also told you that the trap was installed by  
25 an outfit I believe called AVI? Does that ring a bell?

1 A. I don't recall. The name rings a bell, but I'm not sure  
2 if Mr. Howard told me that or if I had learned that at --  
3 earlier in the investigation.

4 Q. Is it also the case that -- let's just call it the King  
5 organization for purposes of simplicity --

6 A. That's fine.

7 Q. -- had multiple cars involving -- that had, you know,  
8 concealed compartments?

9 A. Yes, definitely.

10 Q. In fact, isn't it the case that the undercover vehicle  
11 that you provided to Howard also had a concealed compartment  
12 in it?

13 A. Yes, it did.

14 Q. And there's no evidence that Mr. Dillard was involved in  
15 creating these concealed compartments in any of these  
16 vehicles --

17 THE COURT: Why don't we move on. That's not their  
18 theory of probable cause.

19 MR. CROWE: Okay.

20 BY MR. CROWE:

21 Q. Now, correct me if I'm wrong, but I believe you  
22 testified that you followed Howard's vehicle and the  
23 Mountaineer from McKay's residence at 924 Hyde Park Boulevard  
24 to the garage at 2 East State Street?

25 A. Yes, myself and my other team members as well.

1 Q. Where was your vehicle in relation to the -- you know,  
2 Howard's vehicle and the blue Mountaineer?

3 What I'm asking is, were you right behind them,  
4 were there cars in between you and them?

5 A. Normally -- I don't recall, but normally we're not right  
6 behind them, obviously for safety and getting -- our chance  
7 of our surveillance being compromised. So usually we put a  
8 couple vehicles between the UC and -- or the CS and the  
9 Mountaineer so we're not noticed. But we maintain visual  
10 contact on both vehicles all the way.

11 Q. So given the fact that, first of all, you're following  
12 behind the Mountaineer, and secondly, that there was one or  
13 more vehicles in between your vehicle and the Mountaineer, is  
14 it fair to say that you cannot see the face of the person  
15 driving the Mountaineer?

16 A. I did not see who was driving the Mountaineer.

17 Q. The portion of the body recording from Howard, that  
18 Assistant U.S. Attorney Lindsay Jenkins played for you a few  
19 minutes ago, among other things contains Howard being on the  
20 phone to you saying that -- roughly, that Eric is following  
21 me?

22 A. Yes.

23 THE COURT: This has all been established.

24 MR. CROWE: I'm just laying a foundation for my  
25 next question, your Honor.

1 BY THE WITNESS:

2 A. Yes, that's what he said.

3 BY MR. CROWE:

4 Q. At that time did you know whom the Eric was that Howard  
5 was referring to?

6 A. Yes, I did.

7 Q. How was that?

8 A. We had previously talked about it, Eric Dillard and --  
9 he had mentioned Eric is here. I didn't ask him any further  
10 questions. I already knew who it was -- Eric was. It was  
11 only Eric that Todd and I actually talked about.

12 Q. When Howard said Eric was here -- or is here, how did  
13 you know -- or what caused you to think that was Eric  
14 Dillard?

15 A. Because we had previously talked about him recently.  
16 And he said Eric was here, and Eric was associated with  
17 Michael King and Claude McKay. So I knew that was Eric  
18 Dillard, and I confirmed that later when I debriefed him.

19 Q. Approximately when was the first time that Howard  
20 mentioned Eric Dillard to you?

21 A. About a month ago, when I debriefed him.

22 THE COURT: You mean a month before the May date?

23 THE WITNESS: Yes, sir. Approximately April.

24 BY THE WITNESS:

25 A. And he also -- during that time he also identified his



1 motorcycle shop. We have known -- we had known Eric Dillard  
2 to be a large scale narcotics trafficker on the south side  
3 that runs a motorcycle shop there.

4 BY MR. CROWE:

5 Q. When you say you had known Mr. Dillard to be a large  
6 scale narcotics trafficker, what was the basis of that?

7 MS. JENKINS: Objection, your Honor. Again, I  
8 think we're getting pretty far afield here, relevance for  
9 probable cause.

10 He's already established how he --

11 THE COURT: I will let him answer that.

12 Can you tell us how --

13 BY THE WITNESS:

14 A. Yeah. I had two cooperating sources tell me that and  
15 then, again, I looked at other records, information.

16 BY MR. CROWE:

17 Q. In the reports that I showed you previously, which are  
18 Bates numbered ED 1 through 18 -- let me ask you this  
19 question and see if you can answer it, and if you can't, I'll  
20 show you the reports.

21 Isn't it true that those reports, which are Bates  
22 numbered Eric Dillard ED 1 through 18, make no mention of an  
23 April 2008 debriefing of Howard?

24 A. I'm not sure. I would have to see them again.

25 Q. I guess the reports are in evidence. I won't go through

1 -- the Court can look at them. They speak for themselves.

2 THE COURT: Why would you have to ask him this?

3 We've got the reports.

4 MR. CROWE: Okay.

5 THE COURT: You're moving the admission of those, I  
6 take it, Mr. Crowe?

7 MR. CROWE: Yes, I am, your Honor.

8 THE COURT: Any objection, Ms. Jenkins?

9 MS. JENKINS: No.

10 THE COURT: Those are in evidence.

11 (Said exhibits were received into evidence.)

12 BY MR. CROWE:

13 Q. All right. We've established that the -- at some point  
14 the -- whatever was recorded on the body recording device  
15 that you equipped Mr. Howard with was converted to a CD-ROM?

16 A. That's correct.

17 Q. When did you first listen to the contents of the  
18 material that the Howard body recording device had picked up  
19 on May 26th and maybe May 27th of 2008?

20 A. When did I first listen to his body --

21 Q. Yes.

22 A. I don't recall.

23 Q. Well, was it before or after the DEA had the sheriff  
24 pull over and detain Mr. Dillard?

25 A. It would be after that.

1 Q. And you testified, I think, that -- did you see Howard's  
2 undercover vehicle and the blue Mountaineer enter the garage  
3 located at 2 East 8th Street?

4 A. Other agents did. I didn't.

5 Q. And is it accurate that none of the eight agents who  
6 were involved in the investigation at this time could see  
7 what was going on inside the garage?

8 A. That is correct.

9 Q. So having listened to the recording created by the body  
10 recorder Howard was wearing, is it fair to say that the only  
11 thing that one can hear during the transaction in the garage  
12 is Howard calling the DEA?

13 A. I think there's other conversations on there. I'm not  
14 sure how audible they are or not.

15 Q. Well, let me ask you this then: If the recording device  
16 also functions as a transmitter, during the time Howard was  
17 inside the garage at -- on 2 East 8th Street, I believe, and  
18 you were listening to the transmitted communications, did you  
19 hear anything you thought was significant coming over the  
20 transmitter?

21 A. I don't recall hearing anything.

22 THE COURT: How much more do you have, Mr. Crowe?

23 MR. CROWE: Your Honor, I'm moving very rapidly.

24 THE COURT: Okay. How much more would you guess  
25 you have?

1 MR. CROWE: Oh, I would guess, say, 20, 30 minutes.

2 THE COURT: Okay. Let me ask you to stay closer to  
3 20 minutes.

4 MR. CROWE: I'm leaving out a lot. I'm skipping  
5 over a lot trying to be as expeditious as I can.

6 THE COURT: Okay.

7 BY MR. CROWE:

8 Q. Is it accurate that at the time you caused -- you and  
9 other agents caused Mr. Dillard to be detained later that  
10 evening, the only information you had about what had  
11 transpired in the garage was what Mr. Howard -- what Howard  
12 told you?

13 A. That's correct.

14 Q. From your recollection of the reports that you authored,  
15 isn't it true there's nothing in the reports that indicates  
16 that when Howard said, Eric is following me, you knew that he  
17 was referring to Eric Dillard?

18 A. Yeah. I didn't put that in the report.

19 Q. You did not put that in your report?

20 A. No, sir, I didn't.

21 Q. Isn't it the case that when Howard first told you about  
22 the drug pickup -- well, at all times before Howard went into  
23 the garage he told you it was going to be a five-kilogram  
24 transaction, is that correct?

25 A. Yes, he did.

1 Q. Then when he's in the garage, is it correct that he  
2 makes a telephone call to you or other agents saying the  
3 five-kilogram deal has now become a 25-kilogram deal?

4 A. I don't think he made that call until after he left the  
5 garage, if I remember correctly.

6 Q. When Howard told you that what was going to be  
7 originally a five-kilogram transaction had suddenly become a  
8 25-kilogram transaction, did that cause you to be -- you  
9 know, raise any skepticism in you?

10 MS. JENKINS: Objection, your Honor. We're pretty  
11 far afield in terms of the -- the agent has testified as to  
12 what he learned. Whether or not he was skeptical about it or  
13 whether or not he was dubious is really not relevant to  
14 whether or not there was probable cause.

15 THE COURT: What's the relevance whether he was  
16 skeptical or not?

17 MR. CROWE: That the only source of information  
18 that the agents had regarding the probable cause to detain  
19 Mr. Dillard came from Howard, and Howard was not believable.

20 THE COURT: So you're asking him to comment on  
21 whether Howard was believable or not?

22 MR. CROWE: Whether he believed Howard, in terms of  
23 whether he could have reasonably relied in good faith on what  
24 Howard was telling him.

25 THE COURT: Generally a witness testifies to their

1 perceptions. This would cause him to speculate, it would  
2 seem to me. So I'll sustain the objection.

3 BY MR. CROWE:

4 Q. In your experience as a DEA agent, isn't it unusual for  
5 the size of a transaction -- well, let me backtrack.

6 In your experience as a DEA agent, isn't it typical  
7 for the basic terms of the transaction, in terms of the  
8 quantity of narcotics and the amount of money to be paid for  
9 those narcotics, could be agreed upon in advance?

10 MS. JENKINS: Objection, your Honor. I don't see  
11 the relevance --

12 THE COURT: Sustained.

13 MS. JENKINS: -- to probable cause.

14 THE COURT: It calls for a conclusion. I will  
15 sustain that.

16 BY MR. CROWE:

17 Q. Well, is it your experience that when a supplier is  
18 going to a narcotics transaction, the supplier only brings  
19 the amount of drugs he intends to sell during the  
20 transaction?

21 MS. JENKINS: Same objection.

22 THE COURT: Sustained. You would have to qualify  
23 him as an expert.

24 BY MR. CROWE:

25 Q. In the April 16th debrief of Howard, do you recall

1 writing the report of that debrief?

2 A. Yes, I do.

3 Q. All right. In that debrief -- in that report it  
4 mentions Eric Dillard only in one place, in Paragraph 13?

5 A. Correct.

6 Q. And the only thing that Howard says in Paragraph 13  
7 about Mr. Dillard is that he told Michael King where to go to  
8 get a trap installed in the blue Mountaineer?

9 A. I don't recall -- I don't recall that statement --

10 Q. All right.

11 A. -- from the --

12 Q. Well, that report does not state that during the  
13 April 16th, 2008 debrief that Howard alleged that Mr. Dillard  
14 was a part of the King narcotics trafficking organization?

15 A. Again, I would have to review that report.

16 THE COURT: The report is in evidence, is it not?

17 THE WITNESS: Right. I have to review --

18 MR. CROWE: I don't think that one is yet.

19 MS. JENKINS: We do not object to its admission  
20 into evidence.

21 THE COURT: Why don't you have it admitted, and  
22 then you can argue whatever you want from the report.

23 MR. CROWE: May I approach the witness?

24 THE COURT: Yes.

25 BY MR. CROWE:

1 Q. Let's deem this marked for identification as Defense  
2 Exhibit 2.

3 THE COURT: Is that your report, Agent?

4 THE WITNESS: Yes, sir, it is.

5 THE COURT: You're moving the admission?

6 MR. CROWE: Yes.

7 THE COURT: Okay. Why don't you move on.

8 BY MR. CROWE:

9 Q. What is the date on which you prepared this report?

10 THE COURT: Well, isn't your -- the point of this  
11 is that there's no reference in this report to Dillard?

12 MR. CROWE: I'll get right to it, your Honor.

13 There's one reference.

14 THE COURT: Okay. Well, it's in evidence. Can't  
15 you just --

16 MR. CROWE: Sure.

17 THE COURT: -- unless you want to ask him questions  
18 about it.

19 BY MR. CROWE:

20 Q. All right. I direct your attention, please, to  
21 Paragraph 13 of your report.

22 A. Yes.

23 Q. All right. Is it true that that Paragraph 13 contains  
24 the only reference to Mr. Dillard in that report?

25 A. Yes, that is true.



1 Q. And the only reference to Mr. Dillard in Paragraph 13 is  
2 that he directed Michael King to the shop where a concealed  
3 compartment could be installed in the Mountaineer?

4 A. I see that. It's a reference about concealed  
5 compartments and about Dillard selling large quantities of  
6 cocaine.

7 Q. Well, that's in the Indexing section, correct?

8 A. No, sir. It's in the paragraph as well as  
9 identification of his Y2K Performance.

10 MR. CROWE: I'll take the report back, give it back  
11 to Ms. Jenkins.

12 MS. JENKINS: You can keep it.

13 (Brief pause.)

14 THE COURT: You may proceed, Mr. Crowe.

15 BY MR. CROWE:

16 Q. Now, you testified that the -- that agents observed the  
17 three vehicles, the Mountaineer, the undercover car Howard  
18 was driving and a maroon vehicle, leave the parking garage at  
19 about the same time?

20 A. Yes, that's correct.

21 Q. That was approximately 10:03 p.m.?

22 A. That's correct.

23 Q. At that point is it correct that there were eight agents  
24 in the vicinity of the parking garage?

25 THE COURT: I think we've established that,

1 Mr. Crowe.

2 MR. CROWE: All right.

3 BY MR. CROWE:

4 Q. So if there were eight agents in the vicinity of the  
5 garage, that would mean there were eight agents available to  
6 follow the three vehicles, is that correct?

7 A. That's correct. Some of them together, some of them  
8 weren't. I'm not sure how many vehicles we had.

9 Q. So there really wasn't a lack of manpower to follow the  
10 three vehicles, is that correct?

11 MS. JENKINS: Objection, your Honor. We're getting  
12 into strategy about why the DEA followed who they followed.  
13 That doesn't have anything to do with probable cause.

14 THE COURT: Where are you going with this,  
15 Mr. Crowe?

16 MR. CROWE: Well, they -- what winds up happening  
17 is there's like a 52-minute gap between when the Mountaineer  
18 leaves the garage and when they find it. I'm trying to  
19 figure out what happened and how they lost track of it.

20 THE COURT: Well, isn't the government's theory  
21 that probable cause has been established at this time?

22 MS. JENKINS: Correct.

23 THE COURT: What difference does it make?

24 MR. CROWE: Well, I think it's -- a big part of  
25 their theory is that the blue Mountaineer containing -- which

1 was later found to contain three kilograms of cocaine, was  
2 parked in the parking lot where Mr. Dillard's business is  
3 located.

4 THE COURT: Right. Well, how is that affected by  
5 the fact that they didn't properly follow the Mountaineer?

6 I mean, it's been conceded there were eight agents,  
7 the Mountaineer and the maroon GMC got away.

8 MR. CROWE: My theory is that --

9 THE COURT: Why don't we move on?

10 MR. CROWE: Pardon me?

11 THE COURT: Why don't we move on?

12 MR. CROWE: Okay.

13 BY MR. CROWE:

14 Q. So as I understand your testimony, the agents did  
15 attempt to follow the Mountaineer but lost track of it?

16 A. Yes, sir. We tried to locate it, lost track of it.

17 Q. And how was it about, say, 52 minutes later agents  
18 decided to go to Mr. Dillard's place of business in search of  
19 the Mountaineer?

20 A. As I testified, I already identified Eric Dillard and I  
21 -- Mr. Howard told me he was driving it, so I sent agents to  
22 where he -- where I knew he would be, which would be his  
23 business -- or a place that he could be, which would be his  
24 business.

25 Q. Isn't it true that other people, including Michael King

1 and Devan Neal, had extensive contact with the blue  
2 Mountaineer in terms of driving it to various locations?

3 A. I can't say on Devon Neal. Michael King, yes. We  
4 followed him in that Mountaineer previous to this  
5 transaction.

6 Q. Well, did Howard tell you the primary purpose for  
7 installing the concealed compartment in the Mountaineer was  
8 so Devan Neal could transport narcotics from Chicago to  
9 Kentucky?

10 A. Yes, he did.

11 Q. And isn't it true that Devan Neal was identified as  
12 being in the vicinity of the blue Mountaineer during the late  
13 evening or night hours of May 26th, 2008?

14 A. What I recall is we identified him after Mr. Dillard was  
15 arrested, and he was driving around the area that we were at  
16 and we had him stopped. And, yes, we did identify him at  
17 that time.

18 Q. So he was present in the vicinity of the Mountaineer,  
19 correct?

20 A. Yes, he was.

21 Q. Now, according to your report, did -- isn't it the case  
22 that Howard asked King, Was all the money from Devan, meaning  
23 the money to buy the drugs?

24 A. Yes, he did.

25 Q. And by Devan, you understood that he was referring to

1 Devan Neal?

2 A. Yes, I did understand that.

3 Q. Is it -- was it your understanding then that Devan Neal  
4 was another major narcotics trafficker?

5 A. Yes, it was.

6 Q. Now, at approximately 11:05 p.m. it's the case that  
7 agents saw Mr. Dillard leave his business, correct?

8 A. I was debriefing Howard at that time. I don't -- I  
9 don't think it was at 11:05. I think that was at a different  
10 time that they saw him. I would have to look at the report.

11 Q. Well, approximately.

12 A. Somewhere around 11:00, 11:30, somewhere around that  
13 time.

14 Q. Okay. And when the agents saw him leave his business,  
15 he left in a red pickup truck, not the Mountaineer, correct?

16 A. Like I said -- as I testified, I don't know what vehicle  
17 he left in but it was not the Mountaineer, correct.

18 Q. Were you present on the scene when the sheriff's deputy  
19 pulled over Mr. Dillard's vehicle?

20 A. No, I was not.

21 Q. So I take it also, you were not present when agents  
22 debriefed Mr. Dillard back at his office after he was  
23 detained?

24 A. Yes, I was.

25 Q. You were present then?

1 A. I had made it down there at that point, yes.

2 Q. Do you recall approximately what time you made it down  
3 there?

4 A. Sometime around midnight, shortly before then, somewhere  
5 around that time.

6 Q. Well, to help me place sequence of events, what was  
7 happening when you got to that vicinity?

8 A. Mr. Dillard was already back at his business and I think  
9 we were outside and eventually went inside. I don't recall  
10 what was going on.

11 Q. Approximately how many agents were inside Mr. Dillard's  
12 business when you arrived?

13 A. I don't know if anyone was inside yet at that time. I  
14 think we were still outside, and then we went inside after we  
15 received consent.

16 Q. Where was Mr. Dillard when you first arrived at his  
17 business?

18 A. I don't recall.

19 Q. At that time was Mr. Dillard -- Mr. Dillard was  
20 handcuffed, wasn't he?

21 A. I'm not sure if he was still handcuffed -- he was  
22 handcuffed when he was arrested and transported. I'm not  
23 sure if he was still handcuffed when I -- by the time I got  
24 there or not.

25 Q. Now, at some point shortly after you arrived at Mr.

1 Dillard's business on the night of May 26th, 2008, the agents  
2 took Mr. Dillard inside the business?

3 A. Yes, we did.

4 Q. What happened then?

5 THE COURT: I think this has all been the subject  
6 of a stipulation, hasn't it?

7 MS. JENKINS: Correct.

8 I was just going to say, this is beyond the scope.  
9 And now we're beyond the point where the parties have  
10 stipulated as to what the facts would show.

11 THE COURT: Right. I agree.

12 BY MR. CROWE:

13 Q. Did you participate in the search of Mr. Dillard's  
14 business?

15 MS. JENKINS: Same objection, your Honor.

16 THE COURT: We've stipulated to all this. The  
17 government is resting their theory, as I understand it, on  
18 whether or not there was probable cause to arrest Mr.  
19 Dillard.

20 MS. JENKINS: Correct.

21 THE COURT: You've agreed that he's consented to  
22 the search and you've agreed that he was read the Miranda  
23 warnings.

24 MR. CROWE: Yes.

25 THE COURT: What more is there to do after his

1 arrest?

2 MR. CROWE: Well, I'll just cover one additional  
3 issue, your Honor.

4 THE COURT: Tell me what issue there is remaining  
5 post arrest.

6 MR. CROWE: Well, there's also the issue of the  
7 legality of the search of the Mountaineer, which Ms. Jenkins  
8 maintains was done pursuant to the automobile exception. My  
9 contention is --

10 THE COURT: Hold it. Wait, wait.

11 MR. CROWE: -- that a search was done --

12 THE COURT: Wait.

13 If there was probable cause to arrest him, are you  
14 now contesting there was not probable cause to immediately  
15 search the vehicle that he was driving?

16 (No response.)

17 THE COURT: We have to move this along. I'm not  
18 trying to foreclose any legitimate area of inquiry, but it  
19 appears from the stipulation that the issue is whether or not  
20 there was probable cause to arrest him.

21 It's been agreed that he was Mirandized, and it's  
22 been agreed that he consented to the search of the --

23 MS. JENKINS: And it's agreed that there was a  
24 canine search around the perimeter of the Mountaineer.

25 THE COURT: Right.



1 MS. JENKINS: So all of this stuff goes -- excuse  
2 me.

3 All of these matters, from the government's point  
4 of view, can be decided --

5 THE COURT: The stuff, too.

6 MS. JENKINS: I apologize -- go to matters that can  
7 be decided by the Court on the briefs.

8 THE COURT: I agree. I agree.

9 MR. CROWE: Well, I would just like to quickly  
10 establish that the search of the Mountaineer was conducted  
11 after, then towed to a DEA controlled lot --

12 THE COURT: That's not in dispute.

13 MR. CROWE: All right.

14 MS. JENKINS: We agree.

15 MR. CROWE: I have nothing further in that case,  
16 your Honor. Thank you.

17 THE COURT: Very well.

18 Any redirect?

19 MS. JENKINS: No.

20 THE COURT: Very well.

21 Agent, you may step down.

22 THE WITNESS: Thank you.

23 THE COURT: I still want to know how you get duty  
24 in -- what is it?

25 THE WITNESS: The Bahamas.

1 THE COURT: -- the Bahamas.

2 THE WITNESS: You keep forgetting the location.

3 THE COURT: We wouldn't want to delay you from  
4 getting back to the Bahamas.

5 THE WITNESS: Appreciate it.

6 (Witness excused.)

7 THE COURT: Do you want to call your officer  
8 tomorrow?

9 MS. JENKINS: I spoke with Mr. Crowe. In light of  
10 your directive, your Honor, we did release Sergeant Johnson  
11 in light of the hour. If Mr. Crowe wishes, we can bring  
12 Mr. Johnson back here tomorrow --

13 THE COURT: Are you available?

14 MR. CROWE: I have a --

15 MS. JENKINS: -- or we can do it a different day.

16 MR. CROWE: I have a brief matter at 9:15 before  
17 Judge Tharp. I think we'll be concluded in fifteen minutes.

18 THE COURT: We're off the record.

19 (Discussion had off the record.)

20 THE COURT: Why don't we recess until tomorrow at  
21 10:30.

22 MR. CROWE: That's fine, your Honor.

23 MS. JENKINS: And we'll have Sergeant Johnson  
24 available.

25 THE COURT: And if you reach a stipulation, so be

1 it.

2 MS. JENKINS: Fine. Thank you, your Honor.

3 MR. CROWE: Very well. Thank you, your Honor.

4 THE COURT: You're welcome.

5 (Which were all the proceedings heard.)

6 CERTIFICATE

7 I certify that the foregoing is a correct transcript  
8 from the record of proceedings in the above-entitled matter.

9  
10 /s/ *Mary M. Hacker*

*September 9, 2014*

11 \_\_\_\_\_  
12 Mary M. Hacker  
13 Official Court Reporter

\_\_\_\_\_  
Date